



**MEDICAID**

# Medicaid Eligibility and Planning for Long-Term Care

By **Brianne Sherman**

**O**ur population is aging. Approximately 14% of Wyoming's population is over the age of 65.<sup>1</sup> The U.S. Census Bureau estimates that this figure will continue to grow, with 20% of Wyoming's population expected to be over the age of 65 by the year 2029 when the last of the baby boomers turn 65.<sup>2</sup> As the baby boomers continue to age, and as we all continue to live longer, more and more people are going to need nursing home care at some point in their lives. In Wyoming, nursing home care costs an average of \$84,000 annually. With the likelihood of needing nursing home care, coupled with the high costs of such

care, many of our clients are going to have serious concerns regarding the affordability of nursing home care. This article is intended as a brief overview of Medicaid<sup>3</sup> long-term care eligibility for elderly clients.<sup>4</sup>

Medicaid is a cooperative federal and state health insurance program administered at the state level that provides coverage for the low-income and needy.<sup>5</sup> Medicaid coverage for nursing home care and other long-term care services (collectively referred to throughout this article as "long-term care coverage") is encompassed in the Medicaid program for the aged, blind and disabled. Medicaid is intended



to be a payer of last resort, the theory being Medicaid will cover the cost of long-term care, but only after the individual in need has exhausted all other resources, and only then if the individual meets all of the other stringent eligibility criteria.

## Medicaid Eligibility

In order to qualify for Wyoming Medicaid long-term care coverage, the applicant must (i) be a Wyoming resident, (ii) be a U.S. Citizen, (iii) be age 65 or older (or blind or disabled), and (iv) meet the following eligibility criteria:<sup>6</sup>

- 1. Medical Necessity.** A medical evaluation conducted by a public health nurse must establish that the applicant requires the level of care provided in a nursing home facility. The applicant must have also resided in a hospital or nursing home facility for at least 30 consecutive days prior to the application.<sup>7</sup>
- 2. Income Eligibility.** The applicant's gross monthly income<sup>8</sup> cannot exceed \$2,199.<sup>9</sup> If the applicant's income exceeds this amount, the applicant is required to establish an irrevocable income trust,<sup>10</sup> commonly referred to as a "Miller Trust," to be a receptacle for all of the applicant's income, and to then apply the applicant's income toward the cost of care. It is important to note that if the applicant is married, the income of the applicant's spouse is not included in calculations determining the applicant's gross income.<sup>11</sup>
- 3. Asset Eligibility.** Generally, an individual applicant is limited to \$2,000 worth of non-exempt assets in his or her name. All property, including all real estate, personal property, bank accounts, beneficial interests in trusts, etc., owned by the applicant (or the applicant's spouse, if married)<sup>12</sup> is considered to be included in the applicant's countable resources.<sup>13</sup> If the applicant's countable resources exceed \$2,000, the applicant will be deemed ineligible until those assets are spent-down below this \$2,000 threshold. Medicaid does, however, allow an individual to keep a number of exempt assets,<sup>14</sup> the value of which does not count toward Medicaid eligibility:
  - Personal residence (up to \$552,000 in equity in 2016, but subject to Medicaid estate recovery as explained below)
  - Household goods and personal effects (furniture, clothing, jewelry, wedding rings, etc.)
  - One motor vehicle

- Certain retirement accounts
- Medicaid compliant annuities
- Irrevocable burial trust or burial funds (up to \$1,500)
- Life insurance policies (up to cash surrender value of \$1,500)

Additionally, if the applicant is married, the applicant's spouse is entitled to a Community Spouse Resource Allowance, and thus allowed to exempt an amount up to \$119,220 of otherwise countable resources.<sup>15</sup>

## Common Misconceptions

Many people are often misinformed by well-meaning friends and neighbors with regards to Medicaid planning and eligibility, leading to confusion and misunderstanding of the rules. Some common misconceptions are:

**"I can just give it all away and be immediately eligible."** False. There is a 60 month look-back period for all gifts and transfers for less than fair market value.<sup>16</sup> If the gift or transfer is made more the 60 months prior to the date of the application, it will not be considered for eligibility purposes. However, if a gift or transfer is made within the five years preceding the Medicaid application, a penalty will be imposed for the gift, rendering the applicant ineligible for a period of time determined by the value of the gift (basically, the length of time that the gifted assets would have covered the nursing home costs). Aside from Medicaid qualification, there are other considerations to evaluate when determining whether to transfer or gift assets. The transfer may require reporting to the IRS and may cause unintended income tax consequences for the donee as a result of the donee taking the donor's cost basis in the property. Any property gifted outright will be exposed to the creditor and judgment claims of the person receiving the property.

**"I can keep my house."** Partially true. The applicant's primary residence may be exempt for determination of eligibility; however, the house will be subject to Medicaid estate recovery. Medicaid has the ability to place a lien on the house when the applicant dies in order to seek reimbursement for the costs incurred on the applicant's behalf.<sup>17</sup> Many people incorrectly believe that just because the house is exempt for eligibility purposes, it is then completely exempt from subsequent recovery. On the other hand, proceeds from the sale of the applicant's house are considered a countable resource, and therefore are not exempt for eligibility purposes.

**"Assets owned by my revocable trust are protected."** False. A revocable trust is a common tool used in estate planning to avoid probate while still affording the settlor of the trust the complete use and control over the trust assets during his or her life. Because the settlor retains use and control of the assets held by the revocable trust, those assets are deemed countable resources of

the settlor for purposes of Medicaid eligibility.<sup>18</sup> Medicaid has very complex rules regarding the treatment of trusts, whether assets held in trust are considered countable resources and whether transfers to a trust are considered transfers for less than fair market value.<sup>19</sup> If a client has created any trust and/or is a beneficiary under any trust agreement, you should thoroughly review the terms of such trust to determine whether it complies with the Medicaid rules regarding the treatment of trusts.

**“I am covered by Medicare, so I don’t need to apply for Medicaid.”** False. Medicare provides coverage for primary health care, including routine doctor visits, hospital stays, certain prescription drugs, and certain rehabilitation services. It does not cover the costs of room and board for an extended stay in a skilled nursing facility. Therefore, even though the individual has Medicare coverage for health care, the individual may still need to apply for Medicaid long-term care coverage.

## Helping Your Client Know the Rules and Plan Ahead

Medicaid rules regarding long-term care coverage are extremely complex. An attorney must understand the Medicaid eligibility rules to properly advise a client to the consequences of the client’s actions and to help the client avoid disqualification from Medicaid long-term care coverage. Viable planning options exist if a client wishes to pre-plan to preserve some wealth for the client’s family while still qualifying for Medicaid long-term care coverage.<sup>20</sup>

If the client is over the \$2,000 resource limit, several strategies may be implemented to reduce the client’s countable resources down to the \$2,000 threshold. The client may spend-down the available assets through planned spending, such as paying bills, making improvements and repairs to the home, or otherwise converting countable assets to exempt assets. Alternatively, the client may make calculated gifts, either outright or in an appropriate trust, to divest the client of countable resources, causing the client to meet the asset eligibility criteria when the time comes for the client to apply for Medicaid. These more complex strategies must be evaluated with the utmost care because failure to understand and comply with the Medicaid rules may result in a determination of ineligibility for your client or the imposition of a penalty that could have been avoided through proper planning.<sup>3</sup>

### ENDNOTES

- 1 Press Release. State of Wyoming Department of Administration and Information Economic Analysis Division, June 23, 2016, [http://eadiv.state.wy.us/pop/POP\\_NEWSRLSE\\_ASR15.pdf](http://eadiv.state.wy.us/pop/POP_NEWSRLSE_ASR15.pdf).
- 2 *Id.*
- 3 Not to be confused with Medicare, which is the health insurance provider for individuals age sixty-five and over, and which only provides coverage for up to a maximum of 100 days in a skilled nursing facility.
- 4 This article has been limited in scope to only discuss Medicaid nursing home care eligibility in general. In addition to nursing home care coverage, there are several Medicaid waiver programs not discussed in this article that may be available to your client

as an alternative to nursing home care assistance, and those alternative options should be explored when considering whether long-term care is needed, and whether Medicaid coverage is available and appropriate for the client.

- 5 See 42 U.S.C.A. § 1396a. and Wyo. Stat. § 42-1-102.
- 6 See Wyo. Admin. Code, Dept. of Health, Medicaid Ch. 18 § 7. It should also be noted that an individual entitled to Supplemental Security Income (SSI) is thus eligible for Medicaid.
- 7 Wyo. Admin. Code, Dept. of Health, Medicaid Ch. 18 § 7 (b) (v).
- 8 As defined in 42 U.S.C.A. § 1382a. Income for purposes of Medicaid eligibility is not the same as taxable income. Rather, income includes all earned income, and any annuity payments, pension, retirement, or disability benefits, V.A. benefits, Social Security benefits, etc. , along with any other receipt of funds (i.e. gifts, inheritance, distributions from trust) in the monthly in which it was received.
- 9 The income cap is equal to 300% of the Supplemental Social Security Income payment standard. In 2017, the income cap will be \$2,205.
- 10 See Wyo. Stat. § 42-2-403. See also Wyo. Admin. Code, Dept. of Health, Medicaid Ch. 18 §7 (c)(iv).
- 11 Wyo. Admin. Code, Dept. of Health, Medicaid Ch. 18 § 7 (c) (iii).
- 12 Although the income of the applicant’s spouse is not attributed to the applicant when calculating the applicant’s income, all assets owned by either the applicant or the applicant’s spouse are deemed to be the applicant’s countable resources.
- 13 Resources shall be available to the applicant when the applicant has the legal right, authority or power to make the resource available. Wyo. Admin. Code, Dept. of Health, Medicaid Ch. 18 § 7 (d)(i).
- 14 See 42 U.S.C.A. § 1382b for a complete list of all exempt resources.
- 15 If the applicant is married, there are additional rules regarding the treatment of income and assets which are not discussed in this article.
- 16 See Wyo. Stat. § 42-2-402.
- 17 Wyo. Stat. § 42-4-206.
- 18 Wyo. Admin. Code, Dept. of Health, Medicaid Ch. 18 § 7 (d) (vi)(A). See also Wyo. Stat. § 42-2-403(d).
- 19 See generally Wyo. Stat. § 42-2-403.
- 20 This assumes that a client is competent or otherwise has a valid durable power of attorney specifically allowing the agent to engage in such planning.

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is a Wyoming native and an attorney with Long Reimer Winegar Beppler LLP in Cheyenne. Brianne focuses her practice in estate planning, business organization, elder law, and trust and estate administration, with a particular emphasis in asset protection and long-term care planning. Brianne received her J.D. from the University of Wyoming in 2011 and is licensed in Wyoming, Colorado and North Dakota. She lives in Cheyenne with her husband and two young sons.

