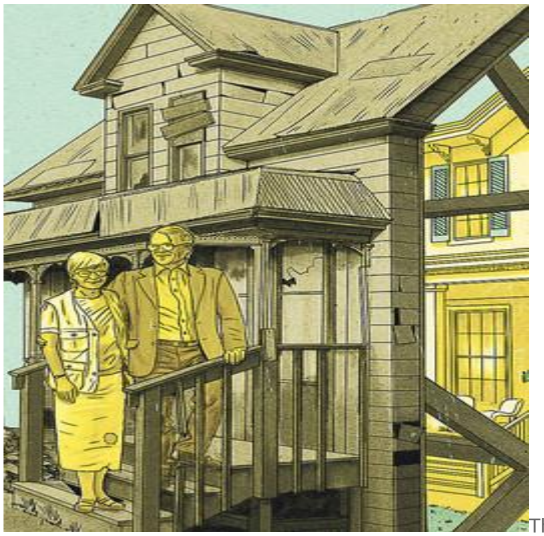
Medicaid Gets Harder to Tap

By KELLY GREENE FAMILY VALUE WSJ March 30, 2012

Families hoping to use Medicaid to help pay for long-term care are facing tougher restrictions—though some states are getting stricter than others.

In Texarkana, Texas, for example, you can get Medicaid to pay for a nursing-home stay after simply buying an annuity with any savings that exceed the qualifying limit, says John Ross IV, a lawyer who specializes in elder-law issues there.



Thomas Kuhlenbeck

But just across the state line, Arkansas's Medicaid program has told him it won't accept the same practice, he says.

Medicare doesn't cover much in the way of long-term care. That falls primarily to Medicaid, the jointly funded state and federal program intended for the poor. The program now is shouldering 40% of the country's long-term-care spending, according to the Kaiser Family Foundation.

To be eligible for Medicaid in most states, you generally can have no more than $2,000 in cash and investments, along with a house and a car. (Spouses are allowed to keep varying amounts as well in different states.) In the past, regulators looked at any gifts you made up to three years before applying for Medicaid. In 2006, a new federal law increased the "look back" period for most transfers to five years.

States are in charge of qualifying people needing long-term care for Medicaid, working within federal rules, and that leaves room for different interpretations, says David Zumpano, an estate-planning lawyer and CPA in New Hartford, N.Y.

"States are adopting the Nancy Reagan strategy—they just say 'no,'" he says.

In some cases, states—many of which are anticipating budget shortfalls—are trying to retrieve money from the estates of people who used Medicaid to pay for long-term care, Mr. Zumpano says. Iowa, Minnesota, Missouri, Nevada, New York, North Dakota, South Dakota, Tennessee and Virginia are all tinkering with ways to recover Medicaid expenses.

What's more, some states are proposing Medicaid cuts to routine dental care in nursing homes, the elimination of adult day-health programs, and increasing the number of daily living activities that patients need help with to qualify.

So-called Medicaid planning—paring down assets in order to qualify—raises ethical issues for many people. And depending on where you live, Medicaid-funded long-term care may not provide the options you would prefer, such as home care or assisted living.

Still, there are situations in which asset-rich families—particularly those who own farms or timberland—need assistance, says Mr. Ross in Texarkana.

Here's how to preserve some assets and possibly still qualify for help.

Get a professional opinion. Consider consulting a lawyer who specializes in elder care to find out what the current laws are where your loved one needing long-term care lives—and how the rules are changing. There are attorney directories at Naela.org and ElderLawAnswers.com.

Give the house but keep the cash. There is a waiting-period penalty for making a gift within five years of applying to Medicaid for long-term care, determined by dividing the local cost of care into the amount you gave away. So, for example, if care costs $8,000 a month in your state and you gave away $80,000, you would not be eligible for Medicaid for 10 months.

One strategy: If you have a house and some savings, and you need to enter a nursing home, you could transfer the house to your children and use your cash to pay for care during the penalty period, Mr. Zumpano says.

Fill the gap with insurance. John McManus, an estate-planning attorney in New Providence, N.J., has clients who are buying long-term-care insurance to cover the five-year look-back period. That way, they can use their assets until coverage kicks in, and then transfer what is left to their children.

"It's a way to hedge their bets without having to buy lifetime long-term-care insurance coverage, which has gotten really expensive," he says.

Create a trust. States are scrutinizing trusts along with asset transfers, but if you set up an irrevocable asset-protection trust more than five years in advance, it can work if it's "properly drafted," says Ann-Margaret Carrozza, an elder-law attorney in New York.

The key is to give the parent as many protections and powers as possible while ensuring the trust remains irrevocable, she says. Parents setting up such a trust also need to make sure that it spells out that they can live in the house and that no one can sell it without written consent.

When should you set up the trust? Ms. Carrozza's rule of thumb is in your 50s. "The people who do it are adult children who have seen their parents go on Medicaid and lose their homes," she says.

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