

The Estate Planning Advisor

Medicaid in the Home

By Richard J. Shapiro, J.D.

Many people assume that if they become infirm but wish to remain in their home, their only alternative is to “spend down” their assets until they are essentially destitute. However, there are options that will permit a person to receive assistance at home without spending their life savings.

Under the “Community Medicaid” program, a senior can receive assistance with their daily needs in their home so long as they meet the requisite medical and financial criteria. First, a person must need assistance with at least two “activities of daily living,” which include tasks such as toileting, dressing, standing and walking without assistance, feeding oneself and bathing. Second, the applicant must have assets in an amount not to exceed \$13,800. This asset limit does not include the value of a primary residence, which is considered an “exempt” asset for Medicaid purposes while a Medicaid applicant (or their spouse) is living in the home.

Unlike the nursing home Medicaid program, there are no “transfer penalties” associated with the Community Medicaid program. Thus, a person can transfer tens or even hundreds of thousands of dollars in assets to children or other persons and be financially eligible for Community Medicaid the *very next day*. Be aware, however, that if such transfers are made and the applicant subsequently requires nursing home care within five years of such transfers, those transfers will require a “waiting period” before nursing home Medicaid is available.

An otherwise qualified home care Medicaid applicant is permitted an income allowance of only \$767 per month. All additional income must be paid toward the cost of care. Unfortunately, the person’s expenses are not a relevant consideration in the Community Medicaid process. For many people, the \$767 income allowance is insufficient to permit a person to participate in the Community Medicaid program and still have enough income to cover their expenses.

The good news is that there is a mechanism for preserving the “excess income” to pay for the Community Medicaid applicant’s expenses and daily needs. That solution is a vehicle known as a “pooled trust.” A pooled trust is a special type of trust established under state and federal law by a not-for-profit organization in which the assets of many disabled persons are “pooled” into a single trust with separate sub-accounts established for each individual beneficiary. For a Community Medicaid applicant, that person’s monthly income in excess of the \$767 monthly exemption amount can be funded into the pooled trust. Once in the trust, the person’s excess income may be used to pay that person’s non-medical living expenses such as groceries, home maintenance, clothing, property taxes, rent, and the like. Upon the beneficiary’s death, their remaining share of income and assets in the pooled trust sub-account must either be repaid to the state as reimbursement for Medicaid benefits paid on that person’s behalf, or can be retained in the pooled trust to be used for the benefit of other beneficiaries of the pooled trust.

Note that even when a person satisfies the financial and medical requirements for Community Medicaid eligibility, the county Department of Social Services that evaluates the case may authorize fewer hours of care than the applicant might realistically require. In such a case, the applicant may appeal the determination to seek more hours, or may elect (often with help of the children) to privately pay for any additional hours of care that Medicaid does not cover.

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