

The Estate Planning Advisor

Legally Responsible Relatives and the Refusal Rules

By Richard J. Shapiro, J.D.

When an elderly or disabled person applies for Medicaid, family members often ask, “am I responsible to contribute towards my loved-one’s cost of care?” Under state and federal law, an individual is legally responsible to contribute towards the care for his or her spouse and a child or step-child under the age of 21. In cases where an individual is applying for Medicaid, the income and assets of a “legally responsible relative” will be considered by the Department of Social Services in determining the spouse or minor child’s Medicaid eligibility.

There are exceptions to the general rule of legal responsibility. Contrary to popular belief, parents have no legal responsibility for adult children nor do adult children have any financial responsibility for a parent who seeks Medicaid assistance. Also, the parents of a minor child who is expected to reside in a medical institution for 30 days or more will not have their assets or income considered in determining the child’s Medicaid eligibility for the period that the child resides in the institution. However, if and when the child returns to the parents’ home, the parents must assume the costs of the child’s medical care.

The most common exception to legal responsibility is a concept known as spousal or parental refusal. Under the “refusal” rules, an otherwise legally responsible spouse or parent can sign a statement refusing to contribute their assets and/or income towards the cost of care of a spouse or minor child, as the case may be. Upon receipt of a refusal notice, the Department of Social Services must evaluate the “ill” spouse or child’s Medicaid application *without* considering the assets or income of the spouse or parent who signed the refusal. However, even when a refusal is filed, the refusing spouse or parent must provide to the Department of Social Services documentation regarding his or her assets and income. Absent such documentation, the ill spouse or child will be denied Medicaid.

While a refusal (accompanied by the necessary financial documentation) safeguards the spouse or parent’s assets and income from the cost of care for an otherwise eligible spouse or child, the refusing party may still retain liability towards his or her loved-one’s cost of care. Under New York law, a Medicaid applicant must assign the State the right to pursue a support action against the refusing party. In the past, Departments of Social Services rarely brought support actions against a refusing spouse or parent. In recent years, however, some counties have taken a more aggressive approach and have brought court actions seeking contributions from refusing spouses and parents. While shrinking Medicaid budgets will likely lead to a rise in the number of support actions, the refusal strategy should remain a viable planning tool for the foreseeable future.

Richard J. Shapiro is a partner with the Middletown law firm of Blustein, Shapiro, Rich & Barone, LLP. Mr. Shapiro is a member of the National Network of Estate Planning Attorneys, the National Academy of Elder Law Attorneys, the New York State Bar Association (Trusts and Estates and Elder Law Sections), and the Hudson Valley Estate Planning Council. He can be reached at (845) 692-0011 or at rshapiro@mid-hudsonlaw.com. The information in this article is for general information purposes only and is not, nor is it intended to be, legal advice, including legal advice for Internal Revenue Code purposes as described in IRS Circular 230.