

The Estate Planning Advisor

Residency Requirements for Medicaid Eligibility

By Richard J. Shapiro, J.D.

Medicaid is a mammoth health insurance program governed by a complex web of Federal and State statutes, regulations and administrative directives. As the only public source of funding available to cover a substantial portion of long-term nursing home costs, it is important to understand the residency requirements associated with the Medicaid program.

To receive Medicaid in New York, an applicant must be a resident of the state. There is no durational requirement for a person to establish residency in New York; a Medicaid applicant who satisfies the financial eligibility criteria can be a resident of New York for a single day to obtain Medicaid coverage. In general, a person will be deemed a resident of New York if they are living in the state and they intend to remain in New York “permanently or indefinitely.” A New York nursing home resident who cannot state such intent – e.g., they have dementia -- will be deemed a New York resident, except in the rare circumstance that they were placed in a New York facility by another state.

Once it is determined that a Medicaid applicant meets the New York residency requirement, the county in which the person is deemed to reside will be responsible for that portion of Medicaid required to be provided by the county. When a person has more than one physical residence, determining their permanent “home” will include a review of factors such as the address from which the applicant votes, where they receive mail, the address on the applicant’s driver’s license, and where they receive their Social Security checks. These factors are important, because elderly persons in need of care will frequently move within the state to a long-term care facility closer to a child or other family member. For example, if a Nassau County resident moves directly to an Orange County nursing home, the Medicaid application must be administered through the Nassau County Department of Social Services. If, however, that person were to first move into her daughter’s home in Orange County and truly establish residency through such acts as changing her address on her driver’s license and registering to vote in Orange County, upon subsequently entering the Orange County nursing home, the Medicaid application would be filed and administered in Orange County.

If a person enters a New York nursing home and was not previously a New York resident, then the county where the nursing home is located will be responsible for administering that person’s Medicaid application under a doctrine called the “where found” rule.

For many years, it was common for counties to terminate Medicaid coverage for a person who relocated from a nursing home in the county of their original residence to a nursing home in another county within New York. In such cases, the resident would be required to file another application in the new county. A Federal administrative ruling in 2000 effectively put an end to this practice, with Medicaid benefits being deemed “portable” within the state.

If there is a dispute between two New York counties as to which county is responsible for processing a Medicaid application, the county in which the Medicaid

applicant is “found” must at least initially process the application and determine the applicant’s Medicaid eligibility. If the counties cannot resolve their dispute, the county where the application is submitted must provide the Medicaid benefits (assuming the applicant is in fact eligible), with the “payer” county having the right to request an administrative hearing at the state level to resolve the dispute between the counties. In no event should the otherwise eligible applicant suffer any interruption of Medicaid benefits.

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.