

Elder Law: Covering costs with spouse in a nursing home

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Sam and Mary have been married for 42 years, and Sam, because of dementia, soon will have to be admitted to a nursing facility as Mary can no longer care for him at home. We will call Sam the "Institutionalized Spouse." Mary is obviously concerned as to how she is going to pay for his care and how she will financially survive as the "Community Spouse."

Mary starts her planning process by visiting her elder law attorney after completing a detailed questionnaire concerning, among many items, their assets (which include both their resources and how they are owned or titled and Sam and Mary's income and the sources of that income for each of them).

Under the Medicare Catastrophic Coverage Act of 1988, Congress established a system for allocating income and resources between the Institutionalized and Community Spouse. The Act attempts to remedy situations where Community Spouses were often faced with having to use their total household income to pay for nursing home costs while receiving Medicaid. That is the reason Act is also known as the Spousal Anti-Impoverishment Act.

Income

Under the Act, states are given the discretion to establish an allowance for the Community Spouse, to be adjusted each year for inflation. The Community Spouse of a nursing facility resident is permitted to have a minimum Monthly Maintenance Needs Allowance equal to 1/12th of 150 percent of the federal poverty guidelines for a family of two

If the Community Spouse's actual income is less than the minimum allowance, the Community Spouse is entitled to receive additional income up to the minimum allowance by deducting income of the Institutionalized Spouse, but only to the extent such income is actually made available to (or for the benefit of) the Community Spouse.

The minimum monthly maintenance needs allowance as of July 1 is \$1,822 and the maximum monthly maintenance needs allowance is \$2,739 as of Jan. 1. Note that the minimum allowance is determined effective July 1 of each year, and the maximum allowance is determined effective Jan. 1.

In addition, the Community Spouse is also entitled to an excess shelter allowance (equal to 30 percent of the minimum Monthly Maintenance Needs Allowance -- \$547 as of July 1) to cover higher housing costs.

In determining the amount of the Institutionalized Spouse's income that is to be applied monthly to the payments for the costs of care in the institution, there is to be deducted from the Institutionalized Spouse's monthly income the following, in the following order:

1. A personal needs allowance (in Pennsylvania, \$45 -- it's been this amount since 2007)
2. A Community Spouse monthly income allowance
3. A family allowance for each family member, equal to at least one-third of the amount by which that family member's income exceeds 150 percent of the monthly official poverty guideline for a family unit of two members, and
4. Amounts for incurred expenses for medical or remedial care ("other medical expenses") of the Institutionalized Spouse, including health insurance premiums.

Resources

With a married couple, all property owned by the spouses, either individually or jointly, is deemed as available resources for eligibility purposes after deducting excluded (non-countable) resources and \$2,400. In Pennsylvania, an applicant can qualify for Medicaid with resources of \$8,000 if the applicant's income is 300 percent of the Federal Benefit Rate (\$1,822 as of July 1). The Community Spouse can then preserve a "spousal share."

The spousal share is determined by the applicant completing a Resource Assessment Form (a "snapshot") as of the date of the applicant's admission to the nursing facility. The spousal share is equal to half of countable resources subject to a minimum and a capped amount. The date of admission is the day on which the applicant enters a long-term care facility in which he or she then stays for at least 30 days.

Note that the applicant must be prepared to verify the information provided on the Resource Assessment Form.

An example of a spousal share calculation is as follows:

If a couple owns \$90,000 in countable resources on the date the applicant enters the nursing facility, the spousal share is \$45,000 (half of \$90,000). The applicant will be eligible for Medical Assistance once the couple's resources have been reduced to a combined figure of \$47,400 -- \$2,400 for the applicant and \$45,000 (one-half of \$90,000) for the Community Spouse. (Note that we have used \$2,400 in applicant resources for this example.)

In addition, there is what is called the Community Spouse Resource Allowance. This is the spousal share allocated to the Community Spouse, potentially increased by an amount determined at a fair hearing or transferred under court order such as a support order against an Institutionalized Spouse for the benefit of a Community Spouse.

As of Jan. 1, the minimum Community Spouse Resource Allowance is \$21,912 and the maximum is \$109,560. Note that these figures are adjusted annually, effective Jan. 1.

For example:

- If the couple owned \$220,000 in countable resources, the spouse in need of care would not become eligible until the couple's resources were reduced to \$111,960 (Note that we have used \$2,400 in applicant resources for the Institutionalized Spouse plus a maximum of \$109,560 for the Community Spouse).
- If the couple owned \$30,000 in countable resources, the spouse in need of care would not become eligible until the couple's resources were reduced to \$24,312 (\$2,400 for the Institutionalized Spouse plus the 2010 Community Spouse Resource Allowance minimum of \$21,912).

It is thus advantageous for the couple to try to have as many resources as possible in their names on the date of admission, up to about \$224,000, so that the amount the Community Spouse is allowed to keep will be as high as possible.

What if the Community Spouse's own income is less than the Monthly Maintenance Needs Allowance?

For example, you calculate Mary's Monthly Maintenance Needs Allowance at \$1,800, but she receives only \$500 a month from Social Security. Resolving such a situation can be a complicated issue in Medicaid planning in Pennsylvania because of the various calculations and individual circumstances with no two situations being alike.

The federal Deficit Reduction Act of 2005 was enacted on Feb. 8, 2006, and made significant changes to the law. This Act passed the House by a vote of 216-214 and the Senate by 51-50 (then Vice President Cheney casting the tie-breaking vote). Among other changes, the Act requires that all states must use the income-first method. This means that a Community Spouse who is short of his/her Monthly Maintenance Needs Allowance will only be allowed to retain excess resources to generate additional income if a gap in income still remains after the Community Spouse has received all of the Institutionalized Spouse's monthly income.

A Kaiser Commission on Medicaid and the Uninsured stated that the Deficit Reduction Act would achieve a \$2.4 billion five year savings and \$6.4 billion over the 2006-2015 period, with more than 60 percent of the savings attributable to the various changes in the law as it relates to nursing facility payments.

In a subsequent column we will address the issue of strategies that Mary can employ to use excess resources that she and Sam have to generate additional income for her living expenses.

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