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## **QUALIFYING FOR MEDICAID IN NEW YORK**

### **WHAT IS MEDICAID:**

Medicaid is a federally mandated, state regulated, and locally administered program which provides medical assistance to eligible individuals based on both an asset test and an income test.

### **WHO NEEDS MEDICAID:**

According to the New England Journal of Medicine, if you live past the age of 65, there is a 43% chance that you will need long term care services. A recent survey by the Rochester Business Journal indicated that more than half of the people who enter nursing homes are there for one year or more, with a substantial portion of these being residents in excess of 5 years.

### **COMMUNITY SPOUSE / INSTITUTIONALIZED SPOUSE:**

With a married couple, the spouse in the nursing home is allowed to keep \$14,850.00, a burial space, a prepaid irrevocable burial account, and \$50.00 per month. The community spouse is allowed to keep the house, a car, and \$74,820.00 in assets (this can be increased to \$120,900.00, based on a formula). In addition, the community spouse is allowed to keep income of \$3,022.50 per month. All other income and resources must be applied to the cost of the nursing home. Medicaid will then pay the difference.

### **LOOK-BACK PERIOD:**

Assets that have been transferred (given away) for less than fair market value are subject to a 60 month look-back period.

All transfers made by either spouse in the look-back period are added together. The total transferred is then divided by the cost of the average monthly nursing home cost in the region where the applicant resides, (\$11,237.00 in Monroe and surrounding Counties) which results in the number of months the applicant is ineligible to receive Medicaid benefits. This penalty does not begin until the individual is eligible for Medicaid, but for the transfer. This is a significant change in the rules of Medicaid eligibility created by the Deficit Reduction Act of 2005. This is the most misunderstood rule concerning Medicaid.

#### **ESTATE RECOVERY / ASSET RECOVERY:**

If Medicaid is paying part of the nursing home bill, the County Attorney has a right on behalf of the County to pursue contributions from the community spouse from excess resources or from excess income, and to recover all of the resources of the community spouse after his or her death, to the extent of its past expenditures. Many well-meaning planners are successful in obtaining Medicaid benefits for a client but give little thought or concern to the asset recovery procedures that will follow.

#### **MEDICAID STRATEGIES:**

Many techniques can be employed to assist an individual in qualifying for Medicaid.

Some of these include:

1. A well crafted exempt asset spend-down and gift plan.
2. Creating special Medicaid qualifying trusts.
3. Using private or commercial annuities.
4. Creating family partnerships.
5. Asset allocation between spouses coupled with spousal refusal.
6. Asset protection techniques to protect family assets from asset recovery.

7. Timing of the Medicaid application.
8. Personal service contracts and life care contracts.
9. Special techniques to protect the family home.
10. Preparation of life planning documents and estate planning documents, to avoid guardianship proceedings and probate (where asset recovery occurs).
11. Reviewing and changing beneficiary designations on life insurance, pension benefits, 401ks and IRAs.

### **THE ROLE OF INSURANCE:**

Long term care insurance can pay some or all of the cost of the nursing home and is an effective defense to the possibility of a nursing home admission. If you can qualify and afford the premiums (and a competent financial planner will help you do both) the need for aggressive Medicaid planning can be greatly reduced or even eliminated. Your first strategy should be to contact your financial planning professional to pursue this option and some of the alternatives.

### **THE ROLE OF AN ATTORNEY:**

An attorney well versed in the area of elder law can advise you on the laws that relate to your case and strategies to protect your family's financial security. There are many well-meaning professionals who offer information in this confusing area, sometimes incorrectly. Your best source of advise is an attorney highly experienced in this complex area of law.

\* Disclaimer - The statements in this outline are accurate as of the date of this preparation, March 29, 2017. This area of law is ever changing. Your best source of information is a consultation with a knowledgeable and competent attorney.

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