

“Medicaid Qualification” Volume III (Post Medicaid Eligibility)

By Lenoard Mondschein

Part 1: Medicaid Recovery (Debunking the Confusion)

Qualifying for Medicaid assistance to pay for skilled nursing home care or a waiver program, is unfortunately not the end of the process. The Department of Children and Families (DCF) has additional requirements which, if not met, will result in future disqualifications of the Medicaid recipient. Some of those requirements are summarized below and should be kept in mind by the “responsible person” and the nursing home.

The first requirement is the annual review. Each year DCF requires the applicant, through the responsible person or nursing home, to produce evidence of all assets owned by the Medicaid recipient as of the anniversary date of the original approval date. Only the assets of the institutionalized spouse, and not the community spouse, are counted. In fact, the community spouse could win the lottery after qualification, and the institutionalized spouse would still maintain Medicaid eligibility. Usually a bank statement is all that is needed, since the institutionalized spouse would have spent down his or her assets or disposed of them in some way prior to the original qualification. DCF will notify the responsible person or nursing home by mail of the annual review. Should that person fail to respond, DCF will require a new application.

The next post-Medicaid eligibility requirement focuses on the use of the Qualified Income Trust (QIT). This type of trust is used to allow the applicant to qualify for Medicaid if his or her income exceeds the

income cap for the year of qualification. For the 2016 calendar year, the income cap is \$2,199.00 per month. DCF requires a review at least once a year of the financial dealings within the trust by reviewing the bank statements during the year. DCF wants to make sure that the amount representing the excess over the income limit is deposited each month into the trust and that it is paid out to the nursing home, community spouse, or used to pay for health insurance. DCF also wants to make sure that all increases in Social Security, Pension and/or other income are deposited in the trust. This usually becomes part of the patient responsibility unless it is diverted to the community spouse and/or used to pay health insurance. Lastly, DCF will verify that none of the money has been used for items other than those mentioned above.

A final DCF requirement is called a change of circumstances. Whenever there is a change of circumstances, DCF requires the responsible person to notify the department within ten days of said event. This can be in the form of receipt of an inheritance by the institutionalized spouse, recovery from personal injury litigation, or a divorce. Sometimes the institutional spouse sells his or her home and receives cash proceeds. If DCF is not notified and later finds out, Medicaid will be terminated. In addition, a recovery claim will be sent to the responsible person seeking repayment for the period of time that the institutionalized person was in possession of assets in excess of the resource limit or, if transferred, then for the period of ineligibility resulting from the transfer. Obviously, if the institutionalized person receives disqualifying assets, it is incumbent upon the responsible person to seek the help of a qualified elder law attorney to assist in preserving Medicaid benefits. Unreported transfers may not only result in future Medicaid disqualification but may also cause criminal liability. The above post-Medicaid eligibility requirements are not exclusive but represent the most common requirements needed to retain hard fought Medicaid benefits.

Part 2: What You Need to Know About Post-Medicaid Eligibility

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Part 3: How Can I Transition from a Nursing Home to an Assisted Living Facility or Back Home?

Although most people move from their home or an assisted living facility (ALF) to a nursing home, in a minority of cases, the move happens in reverse. In those cases, when a person's physical or mental functions improve, it is sometimes possible for a nursing home resident to transition back into the community, either at home or in an ALF.

The greatest obstacle to returning to the community, other than an individual's physical or mental condition, is the cost of care. Under the 1999 United States Supreme Court case of *Olmstead vs. Zimring* (527 U.S. 481), the Supreme Court held that institutionalization based on disability, when a person qualified for in-home care that was readily available, amounted to discrimination by segregation in violation of Title II of The Americans With Disabilities Act (ADA). Accordingly, Florida enacted F.S. 430.7031 in 2002. This statute authorized The Agency For Health Care Administration (AHCA) and The Department of Elder Affairs (DOEA) to create a procedure for persons in nursing homes to transition back into the community with priority placement for services, if they could function in a less costly setting than a nursing home.

As a result of the above Florida statute and subsequent litigation, AHCA and DOEA developed a procedure known as "The 60-day Transition Rule." This rule allows for services to be provided to a person who can transition from a nursing home to an ALF or back home after spending 60 consecutive days in the nursing home. The most significant aspect of this rule is that the person does not have to go on a waiting list as is the normal procedure to obtain Home and Community Based Services (HCBS), which in some cases take more than one year.

Unfortunately, most of the available information on this program is incorrect, and in most cases, persons who could avail themselves of this program do not even know it exists.

While Elder Law Attorneys have helped many persons transition back into the community under this program, AHCA and DOEA need to disseminate better and more accurate information on this program to Nursing Homes, Assisted Living Facilities, Aging Resource Centers, and Community Centers.

If this program can help you or a loved one transition from a nursing home back to the community, contact The Elder Law Center of Mondschein and Mondschein, P.A. for assistance. As an Elder Law firm with a Board Certified Elder Law Attorney on staff, we can guide you through this process and help bring you or your loved one back into the community.

F.S. 430.7031 was repealed in October, 2013. The future of the 60-day Transition Rule is unclear as of February, 2014.

If you want more information about the Nursing Home Transition Program, call our Miami office for a free telephone consultation: **(305) 274-0955**.