**Decoding Medicaid for your long-term care needs**

By Attorney Benjamin S. Wright

This time of year, after the holidays, is the busiest for elder law attorneys. When families gather for Thanksgiving and Christmas after a year apart, someone is often alarmed by how much mom or dad has declined. Maybe there’s been a hospital stay, or a caregiver confesses she’s at the limit of her abilities. Once the holidays are past, these families call lawyers with questions about long-term care, how costly it is, and Medicaid.

**The Role of Medicaid in Long-Term Care**

Medicaid serves as the defaultlong-term care insurance policy for most Americans. It pays for 50%-60% of all long-term care, supporting not just those who are poor but also those in the middle class who have exhausted their savings. That doesn’t take long when the average cost of a nursing home in Wisconsin is nearly $10,000 per month and assisted living facilities charge $6,000 per month or more.

**Common Misconceptions About Medicaid**

Despite Medicaid serving as a crucial safety net for older Wisconsinites, few people understand how to qualify and apply. Misinformation and pitfalls are everywhere. Many people are eligible sooner than they think. Many others would be eligible with a little planning. It is often possible, with good advice, to preserve more resources than the basic rules suggest.

For example, you might have heard that you can’t get Medicaid until you’ve spent everything but $2,000. That is, in fact, the basic rule for individuals. Many families think this means they’ll need to sell mom or dad’s house and car before applying. But Medicaid will usually exempt the home if mom or dad intends to return there, and who doesn’t intend to go home if they can? If you do sell the house, Medicaid will not count it against the $2,000 while it is listed with a realtor, meaning you don’t have to wait to apply. The car is also exempt, as long as it is used for mom or dad’s transportation to doctor’s appointments, outings, family visits, and the like.

**Medicaid Rules for Spouses**

If the person who needs long-term care is married, the rules are quite different. Then the spouse can keep at least an additional $50,000, and up to $154,000 in the right circumstances. That’s in addition to the spouse’s retirement accounts, the home, and a car. With a lawyer using advanced techniques, it’s possible to save even more.

**Spending Down Beyond Medical Bills**

Knowing what you can keep while qualifying for Medicaid is important, but so is knowing what you can do with your savings above that amount. This is commonly called “spending down” for Medicaid. When you need expensive long-term care, that money will be spent on medical bills if on nothing else. I’ve had clients who were told they could only spend the money on medical bills. That’s not true. You have other options.

You can generally spend money on anything that will be owned by or benefit the person who needs long-term care or their spouse. You can prepay for a funeral. You can pay down debt. You can buy a new car and pay for needed home repairs, maintenance, or improvements. You can pay for professional help, such as an accountant, bookkeeper, care consultant, or lawyer.

In specific situations, Medicaid rules allow even more. For example, you might be able to transfer the home to a caretaker child who lived with a parent and provided care for at least two years. Or you might be able to establish a trust for a disabled child or grandchild.

**Asset Transfers and Divestment**

You must be cautious while spending down, however, to avoid or plan for divestment*.* A divestment is any transfer of assets where you get less than fair market value in return. Any divestment in the 5 years before a Medicaid application will make you ineligible for a period of time. The most common divestments are making gifts and paying relatives informally for care and other services. Sometimes surprising things are considered divestments, such as buying an annuity. And sometimes a divestment is part of a good Medicaid plan. An elder law attorney can help you avoid, correct, or plan for divestments.

**Legal Help: Your Medicaid Eligibility Key**

Of course, this is a greatly simplified overview of the Medicaid rules. It takes at least two hours to talk through most of this with my clients. The only way to know the complete picture of your eligibility is to talk to an elder law attorney.

I tell my clients that a public benefit should be accessible to those who need it, that they shouldn’t need a lawyer. But that fact is that they do. The stake is so large, the need so immense, and the rules so complex, that the benefit (financial and otherwise) of hiring an elder law attorney far exceeds the cost.

*Atty. Benjamin S. Wright, Wright Elder Law, New Richmond, specializes in Medicaid Planning and Special Needs Trusts & Planning.* Know Your Legal Rights *is sponsored by the State Bar of Wisconsin Lawyer Referral Service, which connects Wisconsin residents with lawyers throughout the state. Learn more at* [wislaw.com](http://www.wislawnow.com)*.*