

**Town Topics, November 10, 2004 Legal Forum: "An Elder Law Primer:
Medicaid and More by Allen N. Grossman, Esq.**

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A specialized field of law, known as Elder Law, touches almost everyone in the community:

- family members in long-term care settings
- family members with disabling conditions, whether congenital, hereditary or trauma-based
- individuals involved in making decisions about long-term care insurance coverage
- family members with Alzheimer's Disease and other types of dementia
- individuals facing the reality of longer life expectancy for themselves and family members. Elder Law helps individuals cope with real-life experiences
- governmental programs including Medicare, Medicaid, Social Security, veterans benefits and other public benefits
- special needs trusts
- long-term care planning decisions
- advance directives for health care and for financial decision-making
- problems of financial, physical and emotional abuse
- determination of legal and mental capacity
- charitable giving
- requesting court action to establish guardianship.

The common goals are planning regarding assets, income, health care and other family arrangements, and developing an awareness of liabilities and any other contingencies.

Medicaid

Medicaid is neither an insurance program nor universal health care. It is medical welfare assistance for low-income individuals who are aged, blind or disabled.

Originally designed to be the long-term care provider of last resort once an elderly patient and spouse have exhausted their personal resources, today Medicaid funds at least half of all longterm care expenditures in the U.S.

New Jersey's Medicaid focus in 2004 is long term care in a nursing home setting. Going forward, New Jersey has taken small initial steps to extend Medicaid to assisted living and home care. But, so far these alternatives to nursing home care cover less than 5,000 residents statewide, out of an elderly population that exceeds some 1.2 million people.

Medicaid planning strives to help clients in 3 areas:

- (1) establishing eligibility for Medicaid
- (2) avoiding disqualification after achieving eligibility

(3) avoiding or minimizing Medicaid estate recovery after the death of the Medicaid recipient.

The key in Medicaid planning is satisfying the very low limit on resources an applicant (and spouse) are permitted to retain.

The biggest surprise to families considering qualifying for Medicaid is the treatment of IRAs and other qualified retirement benefits. The entire value of these benefits belonging to either spouse is considered an “available asset” to the applicant spouse. You are expected either to spend down or to borrow the full value of those benefits as part of qualifying.

Congress recognizes that impoverishing an applicant’s spouse as a condition of qualifying for Medicaid long-term care benefits is a counterproductive social policy. There are, however, established steps that will protect the home belonging to the applicant and spouse; beyond this, there are legitimate techniques appropriate for the family’s plan that will protect other assets for the spouse to the maximum extent possible.

The other part of Medicaid planning deals with satisfying the very low limit on the applicant’s income. There are almost no income categories excluded from the income calculation. But here again, Congress adopted provisions that permit a moderate amount of “re-balancing” income between spouses so income otherwise payable to the Medicaid applicant can be directed to support the other spouse.