

THE B&B ALERT

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No. 5 Vol. 3

May 17, 2002

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PLANNING FOR HOME CARE BENEFITS IS CRITICAL

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Today, seniors who need long-term care may choose from a wide range of care options, including many options for care outside of nursing homes. In addition, seniors may choose from a varied list of Medicaid and other health care public benefit programs to pay for these options. To make appropriate decisions, seniors and family members must be aware not only of the types of care and housing options available but the limitations of their corresponding public benefit programs. Many potential problems can be eliminated through advance legal planning and counsel.

When deciding whether to remain at home or enter a facility for long term care, seniors must be aware that, while the federal government has been encouraging states to expand their home care benefits programs, public benefits program eligibility rules are still biased toward institutionalization. For instance, in New Jersey, nursing home Medicaid applicants with incomes in excess of the Medicaid Only program limitation (\$1,635 this year) in most cases can still qualify for Medicaid through the State's Medically Needy program. However, because no similar program exists in the State for home care benefits, those with incomes over the Medicaid cap, \$1,635, are automatically ineligible for home care – and assisted living facility – benefits through the Medicaid program. Moreover, the income allowances permitted to recipients of home care benefits programs are generally inadequate to permit the recipients to meet the expenses of maintaining their homes. This second concern can be mitigated, however, when resources have been set aside through appropriate asset protection planning.

While many who choose to receive long term care may believe they are not physically ready for nursing home placement, to qualify for Medicaid home care benefits, applicants must nevertheless demonstrate that they are in need of a nursing home facility level of care. This is proven through a physical exam testing whether the applicant is able to perform activities of daily living, such as eating, bathing, dressing, etc.

Applicants applying for Medicaid home care benefit programs must also be aware that the programs generally have the same asset limitation rules as institutional Medicaid. Moreover, as with institutional Medicaid, the asset rules are not only applied to the applicant but to the spouse. Therefore, advance legal planning to protect the standard of living of the healthy spouse is not only advantageous but often critical.

As with planning for nursing home public benefits, planning for home care benefits programs must be done carefully by a professional who understands the complexities of the Medicaid rules and keeps current on changes in the law. Under New Jersey's Medicaid regulations enacted in June 2001, the rules imposing periods of ineligibility on transfers of assets are now to be applied to home care benefits program applicants as well as to those entering nursing homes. Likewise, the State's estate recovery program, which enables the State to reimburse itself for Medicaid expenditures out of the estates of deceased Medicaid benefits recipients, applies both to institutional and home care Medicaid programs.

Finally, individuals hoping to acquire benefits as they remain at home must remember that the home care programs each offer benefits to a limited number of recipients across the State. This often prevents qualified individuals from receiving benefits.

New Jersey's non-nursing home care Medicaid programs include:

Community Care Program for the Elderly and Disabled (CCPED)
Home and Community-Based Services Waivers for Blind or Disabled Children and Adults
(Model Waivers I, II, and III)
AIDS Community Care Alternatives Program (ACCAP)
Traumatic Brain Injury Program
Assisted Living/Alternative Family Care (AL/AFC) Waivers

Fortunately, through legal planning, individuals can protect assets to lessen the impact of the financial restraints imposed by State home care benefits programs. Legal planning can also help eliminate any gap between the inability to cover the costs of care and benefits payments. Finally, it is designed to avoid State liens and provide security for the community spouse and preserve a legacy for families.



Begley & Begley P.C. is a law firm that concentrates on Estate & Tax Planning, Elder Law, Estate Administration, Guardianship and Will Contests, Real Estate, as well as Medicaid Planning. We are based in Moorestown, NJ, with offices in Avalon, Lawrenceville & Philadelphia, PA.

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