SPECIAL REPORT:
Virginia Medicaid Explanation

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VIRGINIA MEDICAID EXPLANATION FOR LONG-TERM CARE

Roughly 50% of healthy Americans age 65 will eventually require some form of long-term care. This care can be nursing home care, assisted living or home care. Whatever the setting, this kind of care is extremely expensive. Nursing homes, for example, can easily cost in excess of $100,000 per year.

How to Pay

There are five ways to pay for long-term care:

- **Private Pay**: The first way is called private pay; you simply write the provider a check.
- **Long-term Care Insurance**: The best way is to pay for long-term care is to purchase long-term care insurance. Only about 8% of Americans have purchased long-term care insurance. We generally recommend that individuals begin looking into long-term care insurance when they are about 50 years old. At that point it is relatively inexpensive, although it is not cheap, and individuals tend to be more insurable at this age. By age 65, 25% of individuals are no longer insurable.
- **Medicare**: The third way to pay for long-term care is through Medicare. Medicare pays for some home care for people who are homebound, and it pays part of a maximum of 100 days in a nursing home if the person is receiving skilled care.
- **Veterans Administration**: The Veterans Administration pays for long-term care, but the benefit is limited. Some states have state veterans programs. We estimate that VA programs pay for less than 1% of all of the long-term care provided in the United States.
- **Medicaid**: The fifth way is Medicaid, which pays for over half of all the long-term care expenses in the United States.

For all practical purposes, in the United States, the only "insurance" plan for long-term institutionalized care is Medicaid. Medicare only pays for approximately 2% of skilled nursing care in the United States, and private insurance pays for even less. The result is that most people pay out of their own pockets for long-term care until their funds are nearly depleted and they become financially eligible for Medicaid.

Despite the costs, there are advantages to paying privately for nursing home care. The foremost advantage is that by paying privately, an individual is more likely to gain entrance to a better quality facility. The obvious disadvantage, however, is the expense (see attached Appendix for the current monthly average). Without proper planning, nursing home residents can quickly deplete their savings.

Many of our clients are interested in protecting their assets from the cost of long-term care. It is very important for a married couple that the spouse remaining in the community be able to live in dignity. Many of our clients want to preserve a modest inheritance to pass along to their children, as well. We can help achieve these goals by preparing a specially designed Asset Protection Plan tailored to the client's income, assets and objectives.

WHAT IS MEDICAID?

The Medicaid program is a partnership between the federal government and the state government. Each state submits its Medicaid program to the federal government for approval. Every state program is different, and the differences between the state programs are significant. This explanation is a summary of the Virginia program. There are six principal tests for Virginia Medicaid eligibility for long-term care assistance. They are: (1) Virginia residency, (2) membership in a covered group (age 65 or older, or disabled as defined by Social Security), (3) functional and medical criteria, (4) resource eligibility rules, (5) income eligibility rules, and (6) asset transfer rules. Spouses of nursing home residents are given special protection under the resource and income eligibility rules.

MEDICAID MYTHS

There is a lot of misinformation about Medicaid. The following are common Medicaid myths:

1) Three-Year Lookback: The first myth is that people can give away their assets and wait three years and become eligible for Medicaid. Under prior law that was true; however, under the Deficit Reduction Act of 2005 ("DRA"), the lookback period has now been increased to five years.
2) Half-a-Loaf: The second myth is that people can give away roughly half their assets and retain the other half to pay for their care. It was possible prior to DRA, but it is no longer possible. Any gift made within five years of the application will result in some penalty under the current law.
3) Medicaid will take your home: The third myth, and this is a huge one, is that Medicaid will take your home. After the recipient's death, if the recipient received Medicaid after the age of 55, the state has the right to recover from the recipient's estate whatever benefits it paid for the care of the Medicaid recipient. The definition of "estate" includes (1) all real and personal property and other assets held by the individual at the time of death, and (2) all other real and personal property and other assets in which the individual had any legal title or interest (to the extent of such interest) at the time of death. The state cannot initiate estate recovery if a spouse or a dependent or disabled child survives the beneficiary.
4) The IRA is Protected: Another myth is that the IRA is protected. In a few states such as Pennsylvania, the IRA of the community spouse is protected, but in all states including Pennsylvania, the IRA of the institutionalized spouse is just an asset like any other asset. Steps have to be taken to protect that IRA.
5) An Account in Joint Names is Protected: Another myth is that an account in joint names is protected. For example: Mom sets up an account and adds her daughter as a joint owner. She thinks all of that money is the daughter's money. Under Medicaid, if an account requires only one signature for withdrawal, that account is not protected. Mom can still take the money out by herself, so Medicaid says it is her money, and she should take it out and use it for her care. If it is an "and" account, owned by Mom and her daughter, and two signatures are required, then Medicaid says a transfer was made, a gift, as of the time that joint account was opened. The amount of the gift is considered to be one half of the amount in the account.

6) There is No Hurry to Begin Medicaid Transfers: In many situations, with proper planning, it is best to transfer assets as soon as possible, because the clock will begin to run on the five-year lookback. The sooner you contact us for assistance with this, the better.
7) I can give away a certain amount per person per year without a penalty: That is gift tax law. An individual can give away up to a certain amount (see attached Appendix for the current figure) per person per year without paying any gift tax, but there is still a Medicaid penalty.

FUNCTIONAL AND MEDICAL CRITERIA

In order to qualify for Medicaid payment for long-term care, an individual must not only be in a covered group (age 65 or older, or disabled as defined by Social Security), but must also meet both the functional and medical components of the nursing home level of care criteria. A screening team evaluates the individual's abilities to carry out basic activities of daily living (ADLs) and determines if the need for nursing home level of care is met. An individual can be screened while in the hospital or in the community. The screening (either by the hospital or local health department) must be completed before the individual enters the nursing home.

RESOURCE ELIGIBILITY RULES

In Virginia, the Department of Medical Assistance Services (DMAS) administers the Medicaid program. Eligibility is determined by the Department of Social Services (DSS).

The basic rule of nursing home Medicaid eligibility is that an applicant, whether single or married, may have no more than $2,000 in "countable" assets in his or her name. "Countable" assets generally include all belongings except for (1) personal possessions, such as clothing, furniture, and jewelry, (2) one motor vehicle without regard to value, (3) the applicant's principal residence, (4) property used in a trade or business, (5) certain prepaid burial arrangements, (6) term life insurance policies, (7) a life estate in real property, (8) d(4)(A) and d(4)(C) special needs trusts, and (9) assets that are considered inaccessible for one reason or another (excluded resources). All resources must be reported and include money on hand in the bank and in a safe deposit box, stocks, bonds, certificates of deposit, trusts, prepaid burial plots, cars, boats, life insurance policies and real property.

In Virginia, after the nursing home resident has been in the nursing home for six months of continuous institutionalization, the resident's home will become a countable resource unless the resident's spouse or other dependent relatives live in the home.

Income Eligibility Rules

A nursing home resident is eligible for Virginia Medicaid long-term care assistance, if the resident's income is insufficient to pay for the resident's nursing home care at private payment rates. The nursing home resident must spend down all of his or her income, less certain deductions, by payment to the nursing home. The deductions include a small personal needs allowance (see attached Appendix for the current figure), a deduction for any uncovered medical costs (including medical insurance premiums), and, in the case of a married applicant ("institutionalized spouse"), an allowance he or she may pay to the spouse that continues to live at home (the "community spouse"). The Virginia Medicaid program pays the nursing home the difference between the amounts paid by the resident and the Medicaid contract rate. All income and wages received must be reported, including earned income such as wages, as well as unearned income such as Social Security, interest on savings, retirement pensions, Veteran's benefits and other public benefits.

Spousal Protections

Assets. Medicaid law provides for special protections for the spouse of a nursing home resident, referred to as the "community spouse." Under the general rule, the spouse of a married applicant is permitted to keep half of the couple's combined assets (as of the date of institutionalization), up to the Maximum Community Spouse Resource Allowance (CSRA). In addition, there is a minimum resource allowance for the community spouse (see attached Appendix for both of the current figures).

For example, if a couple owns $90,000 in countable assets on the date the applicant enters the hospital, he or she will be eligible for Medicaid once the couple's countable assets have been reduced to a combined figure of $47,000 ($2,000 for the applicant plus $45,000 [one-half of $90,000] for the community spouse). If the couple owned $300,000 in countable assets, the spouse in need of care would not become eligible until their countable assets were reduced to $2,000 for the institutionalized spouse plus the maximum CSRA for the community spouse (see attached Appendix for the current maximum CSRA).

Income. The income of the community spouse will continue undisturbed; he or she will not have to use his or her income to support the institutionalized spouse receiving Medicaid benefits. In some cases, the community spouse is also entitled to share in all or a portion of the monthly income of the institutionalized spouse.

Under Virginia law, however, a spouse is legally obligated to support his or her needy spouse. Based on this requirement, DSS is required to inform a community spouse of his or her legal obligation to provide support.

Asset Transfer Rules

The other major rule of Medicaid eligibility is the penalty for transferring assets. If an applicant or the applicant's spouse transfers assets within 60 months of the application for Medicaid covered long-term care services, then the applicant will be ineligible for Medicaid for a period of time. The penalty period begins when an applicant is otherwise eligible for Medicaid but for the application of a penalty period. This would normally occur when the applicant is in a nursing home and meets the income requirement and the $2,000 maximum resource requirement, but is ineligible for Medicaid because of the penalty period for the transfer. The period of ineligibility expressed in months is determined by dividing the amount transferred by the average monthly nursing home cost in Virginia as set by DSS (see attached Appendix for the current figures). A partial month of eligibility period may result. Gifts with overlapping periods of ineligibility are aggregated for the calculation of the period of ineligibility.

Exceptions to the Transfer Penalty. Special rules apply with respect to the transfer of assets to certain individuals. Asset transfer penalties can be shortened or "cured" with the return of the transferred asset.

The Medicaid Application

You may file an application for Medicaid benefits with the DSS office for the city or county in which you live or lived prior to entering a nursing home. Applicants must report all assets under penalty of perjury. DSS considers an application for Medicaid benefits for nursing home care as a priority. You have the right to appeal an adverse determination.

Medicaid eligibility usually starts on the first day of the month of application. Medicaid can begin as early as three months just before the month in which you applied, if there are unpaid medical bills that need to be covered and eligibility existed at the time.

Medicaid eligibility rules are complex, and errors are easily made that will result in delayed eligibility. All entries on the application must be accompanied by supporting documentation. In addition, after Medicaid eligibility is achieved, the recipient's eligibility will be re-determined every year.

Many applicants will benefit from legal assistance from an elder law attorney during the application process.

PRESERVING RESOURCES AND INCOME

An experienced elder law attorney can assist in qualifying for Medicaid assistance while preserving assets and income for the applicant's community spouse, dependent children, disabled children, or other family members. For a single individual, there are approximately 30 strategies that can be employed to protect assets. For a married couple, there are about 60 strategies available. The timing of the implementation of these strategies is important, in order to maximize the Community Spouse Resource Allowance where a couple owns countable assets having a value of less than twice the maximum Community Spouse Resource Allowance. This is accomplished by timing the implementation of some strategies after the institutionalized spouse enters the nursing home and a Resource Assessment has been obtained.

When one member of a family enters a nursing home, the estate plans of the community spouse and other family members must frequently be revised to ensure that the institutionalized family member is not disqualified if the community spouse or other family member dies first and leaves the institutionalized family member an inheritance. The community spouse or other family members' wills should be revised to provide that any gift to the institutionalized family member is left in a special needs trust.

Implementation of these planning strategies frequently requires legal instruments, including wills, special needs trusts, powers of attorney, deeds, private annuities, family agreements, and personal care contracts. We strongly recommend that you seek the assistance of an elder law attorney in completing this planning.

APPENDIX

2021 Virginia Medicaid Information

Divestment Penalty Divisor	
Northern Virginia	$9,032.00
All Other	$6,422.00
Resource Allowance	
Individual	$2,000.00
Couple - both residing in facility	$3,000.00
Monthly Personal Needs Allowance	
Nursing Home	$40.00
Auxiliary Grant	$82.00
Community Based Care (CBC)	$1,272.00

Community Spouse Resource Allowance (CSRA)	
Minimum	$26,076.00
Maximum	$130,380.00
Monthly Maintenance Needs Allowance (MMNA)	
Minimum	$2,155.00
Maximum	$3,259.50
Standard Allowance	
Shelter	$646.50
Utility	$311.00

2020 Veteran Benefits Information (Effective December 1, 2020)

WARTIME VETERAN

Low Income/Service Pension		
Veteran with no dependents	$1,161/mo.	$13,931/yr.
Veteran with one dependent	$1,520/mo.	$18,243/yr.
Housebound Benefits		
Veteran with no dependents	$1,419/mo.	$17,024/yr.
Veteran with one dependent	$1,778/mo.	$21,337/yr.
Aid and Attendance		
Veteran with no dependents	$1,936/mo.	$23,238/yr.
Veteran with one dependent	$2,296/mo.	$27,549/yr.
Veteran married to Veteran	$3,0712/mo.	$36,861/yr.
Each Additional Dependent	$199/mo.	$2,382/yr.

SURVIVING SPOUSE

Death Benefit		
Spouse with no dependents	$779/mo.	$9,344/yr.
Spouse with one dependent	$1,019/mo.	$12,229/yr.
Housebound Benefits		
Spouse with no dependents	$952/mo.	$11,095/yr.
Spouse with one dependent	$1,192/mo.	$14,300/yr.
Aid and Attendance		
Spouse with no dependents	$1,295/mo.	$15,539/yr.
Spouse with one dependent	$1,530/mo.	$18,355/yr.
Each Additional Dependent	$199/mo.	$2,382/yr.

2021 Tax Information

Annual Gift Tax Exclusion	$15,000
Gifts to Non-Citizen Spouse	$159,000
Federal Estate Tax Exemption	$11,700,000

About This Handout

This handout is a summary of the current rules and regulations of the Virginia Medicaid program for long-term care. The programs of other states will differ. This explanation is provided as a courtesy to help you recognize potential elder law problems. It is not intended as a substitute for legal advice. It is distributed with the understanding that if you need legal advice, you will seek the services of a competent elder law attorney. While every precaution has been taken to make this explanation accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this explanation.

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Hook Law Center focuses its practice on estate and tax planning, planning for long-term care and aging, retirement and investment advice, trust and estate administration and probate, guardianships for those unable to make sound decisions, and the unique situations associated with special needs.

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