



Ohio Medicaid and Elder Law - Planning Ideas

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VII. PLANNING IDEAS.

1. Gifts + Annuities.

EXAMPLE

On July 1, 2015, Bertha Bush, age 70 and in a nursing home, has life savings of about \$230,000. She transfers \$115,000 to her children. She still has about \$115,000 in cash assets which she immediately uses to buy herself an annuity of \$6,000 per month for 19 months. Her monthly cost of care in the nursing home is \$7,300 and her other income is \$1,000 per month. If Bertha applies for Medicaid immediately, she should be declared eligible, except for an improper transfer penalty period, because her cost of care is greater than her ability to pay for it. The \$115,000 transfer should make her ineligible for about 18.8 months, just long enough for her annuity to help her pay for her care through the period of ineligibility. Her children will need to help cover the \$300/month shortfall at the nursing home for the 18.8-month penalty period. This is a small price to pay compared with the value of the \$115,000 gift.

2. Pooled Medicaid Payback Trust.

Money placed into Pooled Medicaid Payback Trusts will not be counted against a Medicaid applicant's \$1,500 resource limit. OAC 5101:1-39-27.1(C)(3)(c). The reason? When the Medicaid recipient passes away, the money remaining in the trust will pay the state back to the extent the state has paid for his/her care via Medicaid.

So why do it? 2 reasons:

- i. The trust pays the state back at the *state* nursing home Medicaid pay rate, which is almost always cheaper than the private-pay rate. Often the rate is \$1,500-\$3,000/month cheaper.
- ii. The Medicaid recipient can draw on the trust to improve his/her quality of life. Remember, while on Medicaid, the recipient only gets to keep \$40/month from his/her income. Often, that will not even cover a couple of trips to the beauty parlor. Yet, with a pooled trust in place, the recipient can draw on it each month to buy things for his or her room such as a new television or specialized chair. The Medicaid recipient can use the funds to go out to dinner or buy other supplemental needs. Best of all, the Medicaid recipient can use the funds to upgrade to a private room while remaining on Medicaid.

EXAMPLE

Take Bertha Bush again. She has \$230,000. Instead of gifting, she establishes a Pooled Medicaid Payback Trust and places her assets in the trust. She lives 2 years in the nursing home, with Medicaid paying her cost of care, before passing away. Had she paid privately, she would have spent \$7,500 per month. However, the state payback rate for her nursing home is only \$5,500. After subtracting the \$1,000/month income that went to help pay her bill, the payback from the trust will be \$4,500 per month. $\$4,500 \times 24 = \$108,000$. \$108,000 is taken out of the \$230,000 to pay the state back leaving \$122,000. Bertha can then leave that \$122,000 to her heirs/beneficiaries. Had she paid privately she would have spent an additional \$48,000 in medical bills, leaving a smaller legacy to her children. Alternatively, she could have taken \$2,000/month out of the trust to make up the difference between the private room and the Medicaid rate. This way she could have remained in a private room while on Medicaid (which typically only pays for a semi-private room).

The risk inherent in this plan is that all of the funds in the Pooled Medicaid Payback Trust might need to be paid to the state if Bertha lives long enough.

3. Gifting + VA Application.

There is a benefit available to veterans and their surviving spouses called the “VA Aid and Attendance Benefit”. It is a benefit which is available to any veteran, or the veteran’s surviving spouse, where the veteran or surviving spouse has unreimbursed medical expenses. To be eligible, the applicant’s unreimbursed medical expenses must exceed his or her ability to pay, the veteran had to have served in the military for at least 90 days (one of which had to be during a time of “war”), and the veteran had to have been honorably discharged. The actual benefit can be as high as \$2,120/month for a veteran and living spouse; \$1,789/month for a single veteran; and \$1,149/month for a surviving spouse.

The VA Aid and Attendance Benefit can be dovetailed with a Medicaid application to help pay for a Medicaid applicant’s cost of care during a period of restricted coverage for Medicaid purposes.

VIII. MEDICAID – PASSPORT & ASSISTED LIVING WAIVERS

A. PASSPORT (Medicaid to pay for Home Care) *See. O.A.C. §5101:3-31-03 §5101:3-31-04, §5101:3-31-05.*

- a. Process - Must be found care eligible by the Council on Aging as well as financially eligible through the Ohio Department of Job and Family Services.
- b. Eligibility- To be eligible for Passport:
 - i. The individual is 60 or older and agrees to participate in PASSPORT.
 - ii. Must have assets less than \$1,500 and monthly income less than \$2,199.
 - iii. The cost of the services over a year must not exceed an annual cost cap, which is 60% of the total Medicaid cost of nursing home care (unless health declines while on PASSPORT, requiring 100% of the Medicaid cost).
 - iv. The needed services are not readily available through another source at the level required to allow the individual to live in the community.
 - v. The individual's health related needs can be safely met in a home setting as determined by the PAA.
 - vi. Prior to PASSPORT enrollment, the attending physician must approve that the services are appropriate to meet the individual's needs.
 - vii. The individual must be determined to meet the criteria for an intermediate or skilled level of care in accordance with rule 5101:3-3-05 or 5101:3-3-06 of the Administrative Code and, in the absence of PASSPORT, would require NF services.
 - viii. PASSPORT has slots available.
 - ix. The individual must not be under Medicaid or Medicare hospice at the time of enrollment.
- c. If eligible, the following services may be available.

- i. Adult day services.
- ii. Chore services.
- iii. Emergency response system services.
- iv. Home medical equipment and supplies services.
- v. Homemaker services.
- vi. Minor home modification, maintenance and repair services.
- vii. Nutrition consultation services.
- viii. Personal care services.
- ix. Social work counseling.
- x. Transportation services.
- xi. Home delivered meal services.
- xii. Independent living assistance services.
- xiii. Non-medical transportation services as set forth in rule 173-39-02.18 of the Administrative Code.

B. Assisted Living Waiver (Medicaid to pay for Assisted Living) *See. O.A.C. §5101:3-33.*

- a. Process: Similar to Passport. Must be found care eligible by the Council on Aging as well as financially eligible through the Ohio Department of Job and Family Services.
- b. Eligibility.
 - i. Individual must be 21 or older.
 - ii. Must have assets less than \$1,500 and monthly income less than \$2,199.
 - iii. The individual must have an intermediate or skilled level of care (need help with at least 2 activities of daily living).

- iv. If the individual requires skilled nursing care beyond supervision of special diets, application of dressings, or administration of medication, it must only be required on a part-time, intermittent basis for not more than a total of one hundred twenty days in any twelve month period. A part-time, intermittent basis means that skilled nursing care is needed for less than eight hours a day or less than forty hours a week.
 - v. The individual must be: (i) a nursing facility resident who is seeking to move to a residential care facility and would remain in the nursing facility for long term care if not for the assisted living waiver; or (ii) participates in another waiver program (like PASSPORT or regular Medicaid) and would move to a NH if not for the waiver; or (iii) has resided in a residential care facility and privately paid for 6 months.
 - vi. The cost of the services over a year must not exceed an annual cost cap, which is 60% of the total Medicaid cost of nursing home care.
 - vii. The individual must have the ability to make room and board payments at the current supplemental security income (SSI) federal benefit level minus fifty dollars (\$648).
 - viii. The individual is age twenty-one or older at the time of enrollment.
 - ix. There are Assisted Living Slots Available.
 - x. The individual's health related needs, as determined by the PASSPORT administrative agency, can be safely met in a residential care facility.
 - xi. The individual may not already be enrolled in hospice.
- c. **Planning Tip:** If income exceeds the \$2,130 cap, establish a Qualifying Income Trust. Transfer a portion of your monthly income each month into the Qualifying Income Trust. The amount placed in the Qualifying Income Trust will not be counted against you for eligibility purposes. *See O.A.C. 5101: 1-39-27.1 (3)(b)*

EXAMPLE

Mary has resided in an ALF for 7 months. Her assets are down to \$1,400 and she makes \$2,300 income per month in Social Security and Pension. Her income is too high for her to be eligible for the Assisted Living Waiver (the income cap is \$2,199). Therefore, she establishes a Qualifying

Income Trust and each month, after her income is deposited into her regular checking account, she writes a \$300 check to her Qualifying Income Trust account. This brings her countable income down to \$2,000/month and she is then income and asset eligible to receive the Assisted Living Waiver.

IX. MEDICAID – TOP 10 REASONS TO FILE AN APPEAL

1. No 10-day letter.
2. No period of restricted coverage calculated where there is an improper transfer and/or no credit given for returned gifts.
3. Payments to child were for services and were not a gift.
4. Countable real property was listed for sale at an amount which was not *exactly* at the county auditor's value.
5. Deposit at a retirement community is treated as a life lease or a countable resource.
6. Medicaid caseworker does not process case in a timely fashion.
7. Caseworker treated income as a countable resource in month it was received.
8. Property contiguous to exempt house is treated as a countable resource.
9. Medicaid office fails to properly comply with a State Hearing or Administrative Appeal Decision.
10. County treats a transfer as improper even where it has been rebutted by clear and convincing evidence.

X. Additional Resources.

- A. **Immediateannuities.com.** This website provides good estimates of how much an annuity might cost or how much of a monthly annuity can be produced with a given single premium payment. The estimates available on the website are useful in counseling clients as to what the approximate cost of an annuity might be.
- B. **Medicaidannuity.com.** This is the website for Krause Financial Services. Not only does Krause Financial Services sell annuities as short as three months in length, its website can be a good resource for both attorneys and their clients to help them determine whether an annuity can be helpful as a part of a Medicaid plan.

- C. <http://www.odjfs.state.oh.us/HearingsAppeals/>. This is the web address to search for the Ohio Department of Job and Family Service's state hearing and administrative appeal decisions. Cases can be searched by topic and is an invaluable resource to better understand the Medicaid regulations.

