The Basics of Wisconsin Medicaid

By: Peter J. Walsh, Esq.
O’Neil, Cannon, Hollman, DeJong S.C.
111 East Wisconsin Avenue
Suite 1400
Milwaukee, Wisconsin 53202-4870

Telephone: 414-276-5000
Facsimile: 414-276-6581
E-Mail: peter.walsh@wilaw.com

www.wilaw.com

This presentation is intended to provide general information and is not intended to constitute legal advice relative to a specific situation. Wisconsin law is the basis for state law issues, which may not be applicable in all cases. You should consult with an attorney regarding your particular situation before acting on any information contained in this presentation.
Medicaid:

Is a joint federal and state medical insurance program that covers the cost of long term care, such as extensive nursing home stays as well as limited at home assistance to certain needy and low-income individuals.
Common Myths About Medicare and Medicaid:

<table>
<thead>
<tr>
<th>Myth:</th>
<th>Reality:</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is unlikely that I will ever need long-term care</td>
<td>It is estimated that 50% of all Americans will need long-term care at some point in their lives</td>
</tr>
<tr>
<td>I can afford to pay for my own long-term care</td>
<td>Average costs in Milwaukee for long term care in 2009:</td>
</tr>
<tr>
<td></td>
<td>– Medicare certified home health care aide: $6,673 per month</td>
</tr>
<tr>
<td></td>
<td>– One bedroom assisted living unit: $3,325 per month</td>
</tr>
<tr>
<td></td>
<td>– Semi-private room in a nursing home: $7,243 per month</td>
</tr>
</tbody>
</table>
Common Myths About Medicare and Medicaid (cont.):

<table>
<thead>
<tr>
<th>Myth:</th>
<th>Reality:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare pays for all long-term care in a nursing home</td>
<td>Medicare coverage is limited as to duration and cost of care</td>
</tr>
<tr>
<td>Joint accounts protect assets</td>
<td>• All of the assets of a joint account may be considered “countable assets” of the Medicaid applicant</td>
</tr>
<tr>
<td></td>
<td>• A withdrawal from a joint account by a non-Medicaid applicant owner can constitute a “divestment” of the Medicaid applicant</td>
</tr>
</tbody>
</table>
## Common Myths About Medicare and Medicaid (cont.):

<table>
<thead>
<tr>
<th>Myth:</th>
<th>Reality:</th>
</tr>
</thead>
<tbody>
<tr>
<td>You can qualify for Medicaid by giving away all of your assets</td>
<td>Giving away assets may constitute a “<em>divestment</em>” and result in an “<em>ineligibility period</em>”</td>
</tr>
<tr>
<td>Someone in a nursing home must spend down all of his assets on nursing home care before qualifying for Medicaid</td>
<td>Countable assets can be converted to exempt assets or unavailable assets</td>
</tr>
</tbody>
</table>
Medicare Pays Certain Costs of Skilled Nursing Facility (2009 numbers) based on the number of days of a nursing home stay, as follows:

- First 20 days – Medicare pays 100% of approved amount
- Additional 80 days – Medicare pays all but $133.50 per day
- Beyond 100 days – Medicare pays nothing
- An individual must have been hospitalized for at least three days prior to entering the skilled nursing facility
Medicaid Eligibility:

A determination of Medicaid eligibility requires a consideration of all of the following:

- The Applicant's Medical Need
- The Applicant's Income
- The Applicant's Assets
- The Applicant's Transfer/Divestments
Medical Need:
An applicant for Wisconsin Medicaid must satisfy a combination of the following non-financial requirements:

- A qualified recipient of Supplemental Security Income, then the applicant automatically qualifies for Medicaid
- Apply for all eligible non-need-based public benefits
- Cooperate with medical support liability and third party liability, and pay any “cost share” required
- A U.S. citizen or have “qualified alien” status
- A Wisconsin resident and be aged (65 years of age or older), blind or a disabled individual
Medical Need:

• Functional Eligibility for Medicaid:

• Applicant must require assistance with certain “activities of daily living,” such as:
  – eating           – dressing
  – bathing          – toileting
  – transferring     – moving about

• Different levels of care required for Nursing Home care and Non-Nursing Home care.
Medicaid Income Eligibility:

- Depends on the “cost of care”

- Applicant’s “net income” must be below the applicant’s “cost of care.”

- Applicant’s “net income” must be spent on his or her cost of care and Medicaid pays the difference, if any (e.g., co-pay situation).

- For example, if an applicant has $3,000 of monthly net income and his or her cost of care is $6,000 per month, then the applicant will have to expend $3,000 per month towards the cost of care and Medicaid will pay the balance.
Medicaid Asset Eligibility:
Depends on the value of “countable assets” an applicant has at the time of application:

- “Countable assets” are all assets owned by an applicant and his or her spouse except for certain “unavailable assets” and “exempt assets.”
- Unmarried applicant or an applicant whose spouse is already receiving Medicaid can have only $2,000 in countable assets.
Medicaid Asset Eligibility:

Depends on the value of “countable assets” an applicant has at the time of application:

- Certain “Spousal Impoverishment Protections” are afforded to a married applicant who has a spouse that is not in need of Medicaid, e.g., a “community spouse.”

- Countable assets in excess of the allowable minimum amount must be “spent down” before Applicant is eligible for Medicaid.
“Unavailable assets” are assets that are not actually available to the applicant or convertible to cash by or for the applicant for at least 30 days.

• Examples of Unavailable Assets that are not counted for Medicaid purposes:
  – Property listed for sale but not sold,
  – Life estate interests in real estate,
  – Certain annuities and promissory notes, and
  – Certain irrevocable trusts, e.g., special needs trusts.
Exempt Assets:

- Exempt assets for a single applicant that are not counted for Medicaid purposes, include:
  - Total of $2,000 in cash or investment assets,
  - Reasonable value of personal property and furnishings,
  - Wedding rings regardless of value,
  - One car of no more than $4,500 in value, or unlimited value if car is used to go to medical appointments,
  - Life insurance with a death benefit of $1,500 or less,
  - Certain burial and funeral funds,
  - Property used in a trade or business (may include farm or rental property),
  - Certain equity value of home, and
  - Assets in a special needs trust, if properly set up.
Home Exemption:

Certain equity value of a home is exempt:

• The equity value of the home up to $750,000, if applicant has the subjective intent to return to the home

• An unlimited equity value of the home if the applicant’s spouse, minor, or disabled child lives in the home
Additional assets allowed to the community spouse:

• Tangible personal property, e.g.,
furniture and furnishings, of unlimited
value,

• All tax deferred qualified retirement
funds (e.g., IRA or work related
pension funds) of community spouse,
and

• Community Spouse Resource
Allowance (“CSRA”)

Your link to lawyers who mean business
The CSRA equals the greater of:

- One half of the value of couple's total combined “countable assets” up to $219,120 (e.g., $109,560), or

- Up to $50,000 of the value of the couple's total countable assets
Examples of the determination of CSRA:

<table>
<thead>
<tr>
<th>Countable Assets of Couple</th>
<th>Community Spousal Resource Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$300,000</td>
<td>$109,560</td>
</tr>
<tr>
<td>$150,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>$120,000</td>
<td>$60,000</td>
</tr>
<tr>
<td>$75,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>$50,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>$45,000</td>
<td>$45,000</td>
</tr>
<tr>
<td>$30,000</td>
<td>$30,000</td>
</tr>
</tbody>
</table>
Minimum Monthly Maintenance Allowance ("MMMA")

• A community spouse is entitled to a MMMA to maintain the spouse’s independence in the community

• The amount of MMMA is set annually according to Federal poverty guidelines

• MMMA is $2,428.33 as of July 1, 2009, but can be raised to as much as $2,739 to cover certain “shelter expenses”
Medicaid Spend Down:

To the extent an applicant’s “countable assets” or “net income” exceed the allowable amounts, assets and/or income must be spent down before the applicant can qualify for Medicaid.
Transfer of Assets

- Medicaid eligibility requires an examination of certain transfers made by the applicant

- This analysis requires an understanding of the following key terms:
  - Divestments,
  - Lookback period,
  - Ineligibility period, and
  - Ineligibility period start date
**Divestments:** The transfer of income, non-exempt assets, or homestead property in exchange for assets or services which are worth less than fair market value of what was transferred

- A divestment is the making of a gift
- The penalty for a divestment is the imposition on an applicant of a period of time of ineligibility for Medicaid benefits
Exceptions for the Transfer of the Home: An applicant’s transfer of his or her home does not constitute a divestment if the home is transferred to:

- The applicant’s spouse;
- The applicant’s child, who is under age 21, blind or permanently or totally disabled;
- The applicant’s sibling who has an ownership interest in the homestead and who has resided in the home for at least 12 months; or
- Caretaker Child
Caretaker Child: A child of the applicant who:

• Has resided in the home for at least two years immediately before applicant’s institutionalization,

• Provided care to the applicant at home prior to his institutionalization, and

• By providing such care, permitted the applicant to remain at home for a longer period of time than applicant would have been able to without such care.
Lookback Period: Describes the period of time preceding the date of a Medicaid application during which the applicant’s finances are examined to determine if divestments were made:

- For transfers made before January 1, 2009:
  - Gifts to trusts 60-month lookback period, and
  - Outright gifts 36-month lookback period

- For transfers made after January 1, 2009, a 60-month lookback period for all gifts whether outright or to trusts

- Divestments during the lookback period may cause an “ineligibility period”
**Ineligibility Period:** The period of time an applicant is ineligible for Medicaid because of a divestment:

- The period is expressed in terms of a number of days (e.g., a 350 day ineligibility period)
- The period is calculated by dividing the value of the asset divested (e.g., gifted) by the “statewide average daily nursing home cost to a private pay patient”
- The average daily rate as of July 1, 2009 is $209
Examples of Ineligibility Period Calculations:

• A gift of $100,000 can result in an ineligibility period of 478 days ($100,000/$209.16 = 478.10)

• A gift of $45,000 can result in an ineligibility period of 215 days ($45,000/$209.16 = 215.15)
Ineligibility Period Start Date:

• The ineligibility period does not start until an applicant is “otherwise eligible” for Medicaid
• “Otherwise eligible” means in a nursing home with $2,000 in countable assets or less
• When you most need it, the ineligible period begins
Wisconsin Estate Recovery

• The Wisconsin Medicaid Estate Recovery Program seeks repayment for the cost of certain long term care services paid for by Medicaid

• The State seeks repayment through:
  – Liens against a home,
  – Claims against an estate, affidavits of transfer, and
  – Voluntary recoveries
Before the State can put a lien on an applicant’s home the following must be established:

- The applicant lives in a nursing home and is required to contribute to the cost of his care,
- The applicant is not reasonably expected to return to live at the home, and
- A spouse, child under the age of 21, or a child who is disabled or blind does not live in the home
The State cannot foreclose on a home:

• While the institutionalized applicant expresses an **intent** to return to the home,
  – The intent does **not** need to be reasonable
  – The intent does **not** have to be currently expressed but it must be documented

• Caretaker Child and sibling exceptions
The Caretaker Child Exception:

The State cannot foreclose while a child of the institutionalized applicant lives at the home, if the child lived with the institutionalized individual for two years prior to his or her admission to the nursing home and by doing so, the child postponed the institutionalized applicant’s admission to the nursing home.
The Sibling Exception:

The State cannot foreclose while a sibling resides in the home, if the sibling holds an ownership interest in the home and the sibling resided in the home for at least 12 months before the applicant’s admission to the nursing home.
Medicaid Planning Techniques:

Medicaid Planning generally falls into one of three categories:

- Avoiding the need for Medicaid by obtaining alternative sources of payment for long-term care;
- Reducing the total cost of a Medicaid spend down by sheltering certain assets when long-term care is not anticipated in the near future; and
- Crisis planning when long term care is immediately necessary
Alternative Sources of Payment:

• “Long Term Care Insurance Policies” ("LTCP") can be obtained to cover certain costs of nursing home care and other forms of long term care

• Current LTCPs offer a variety of benefits, including coverage for care at home, payment to relatives providing personal services and care, and life insurance riders

• The premiums for LTCPs depend on the age and health of the applicant and the benefits of the policy

• Annual premiums are normally substantially less than the cost of single month in a nursing home

• Tax deductions and other tax benefits are available for LTCPs
Sheltering Certain Assets:

• Techniques may be employed to reduce the potential Medicaid spend down, such as:
  – Conversion of ownership in homestead and other real property to life estate and remainder interest;
  – Maximize contributions to both spouse’s deferred compensation accounts, such as 401(k) and IRA;
  – Leaving estate to surviving spouse through a special needs trust instead of outright;
  – Transferring ownership of life insurance to children or an irrevocable trust;
  – Making transfers to children or an irrevocable trust;
  – Paying children for personnel services (need a written contract); and
  – Establishing a caretaker child
Sheltering Certain Assets: (cont.)

• The creation of a life estate and making transfers to children or irrevocable trusts is problematic if long term care appears likely in the next five years.

• For more detail see Medicaid Asset Protection Planning for Married and Single Individuals included as supplemental documents 7 and 8 in “The Basics of Wisconsin Medicaid.”
Crisis Planning When Long Term Care is Immediately Necessary:

- Techniques may be employed to save assets from a Medicaid spend down even after long term care becomes immediately necessary.
- Paying relatives reasonable fees for personnel services (need a written contract).
- Transferring homestead to a caretaker, disabled or minor child.
- Countable assets can be converted to exempt assets, by spending money on a homestead, paying down mortgage, real estate taxes, and other necessary expenses.
Crisis Planning When Long Term Care is Immediately Necessary: (cont.)

- Countable assets maybe converted to an income stream by the purchase of a Medicaid qualified annuity
- Countable assets may be made unavailable by loaning money to children in exchange for a qualified promissory note
- A divestment with a qualified partial cure arrangement may reduce a Medicaid spend down from 100% to 50% of the applicant’s countable assets (e.g., reverse half-loaf technique)
- Establish “Special Needs Trust” through a “Pooled Trust” managed by a non-profit association such as WisPact or WISH Pooled Trust
Questions
The Basics of Wisconsin Medicaid

By: Peter J. Walsh, Esq.
O’Neil, Cannon, Hollman, DeJong S.C.
111 East Wisconsin Avenue
Suite 1400
Milwaukee, Wisconsin 53202-4870

Telephone: 414-276-5000
Facsimile: 414-276-6581

E-Mail: peter.walsh@wilaw.com

www.wilaw.com

This presentation is intended to provide general information and is not intended to constitute legal advice relative to a specific situation. Wisconsin law is the basis for state law issues, which may not be applicable in all cases. You should consult with an attorney regarding your particular situation before acting on any information contained in this presentation.