Community Partnership For Persons With Disabilities of Rockaway Township
Are You Prepared For Your Parents Golden Years
October 23, 2010

The Three Essential Legal Documents Everyone Needs
Medicaid, What Is It and How To Qualify
An Introduction to Estate Planning and Medicaid Planning Basics

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INTRODUCTION

There is a popular book called *Everything I Needed to Know I Learned in Kindergarten*. One of the "lessons" was, if you make a mess, clean it up. You are leaving a mess for your family to clean up if you do not properly plan your estate. If you die without a will, the State decides who gets your money, you don't. If you die without a Will, the court decides who looks after your minor children, you don't. If you die without a will, it costs your family money.

If you die without a Will, New Jersey statutes decide who gets your property -- you don't. There are fees that your family can avoid by having a properly prepared Will. For example, surety bond fees for your estate's administrator can be $400 or more per year. The same is true for whomever the court appoints as trustee of any assets passing to minors (under 18 years old). The court appoints a guardian for your minor children, and that person or people may not share your values or raise your children where and how you would want.

Those more advanced in years have even more reason to plan their estates. Health care costs, especially in home nursing care and nursing home costs can wipe out a family inheritance and jeopardize the financial security of a spouse.

The "one size fits all" planning and Will done by many attorneys, especially general practice attorneys, are usually inadequate. Knowledge of the law, skill and taking the time getting to know you, your financial and family situation are needed. Coordination of your desires, your situation, and the sometimes conflicting gift tax, estate tax, and Medicaid laws, are required to avoid significant legal pitfalls and disasters.

Understanding the basics of estate planning and Medicaid planning are the first steps to taking care of yourself and those you care about. Estate planning is getting your assets where you want after you die as efficiently as possible and with as little tax as possible. Therefore, we will start with a brief background on taxes.

CAVEATS

This is an outline and explanation of some of the options available in estate planning and Medicaid planning. The material may not apply to you, or may apply only with important modifications. In addition, there may be areas that you need to address that this outline does not cover. The material assumes that where spouses are discussed both are United States citizens. If either spouse is not a United States citizen there are additional issues that need to be addressed since there are different gift tax rules and there is no federal and no New Jersey estate tax marital deductions. This discussion is also based on current law. **Changes in the law may make this material partially or totally inaccurate or incomplete.**

Nobody can give you proper estate planning and Medicaid planning advice without knowing your assets, liabilities, income, expenses and family situation.

BACKGROUND

Federal Gift Tax

There is a federal tax on all gifts. For 2010 they are taxed at the same rate as the top income tax rate. For other years they are taxed based on the federal estate tax rates. However, there are four major exemptions. There is no gift tax on transfers between spouses and gifts to charities. Each person has a lifetime credit against gift taxes that allows you to give $1,000,000 in gifts over the annual exclusion before you have to pay a gift tax. However, using the credit reduces your available estate tax credit (when we have an estate tax) dollar for dollar. There is also an annual gift tax exclusion that is currently $13,000. [1] You may make a gift of cash or property up to $13,000 to each of as many individuals as you want each and every year of your life without a gift tax. This "annual gift tax" exclusion can be used to reduce estate taxes by transferring assets out of your estate prior to death. Lifetime gifts in excess of the annual gift tax exclusion will reduce the amount of the $1,000,000 gift tax exemption.

Once the gift tax credit is used up, the person making the gift pays the gift tax based on as the top income tax rate in 2010 or the estate tax rates in other years.

There are special rules for "529 Plans," also known as Qualified State Tuition Plans ("QTP"s). Contributions to a 529 plan are treated as completed gifts to the beneficiary, not as future interests in property so the contributions are eligible for the annual gift tax exclusion, currently $13,000 per gift recipient. If the amount of contributions exceeds the annual exclusion, you can elect to treat the gift as made evenly over a five-year period beginning with the calendar year of the contributions. So if you contributed $65,000 to a 529 plan for a child or grandchild in 2009, you could treat it as $13,000 made in each of 2009, 2010, 2011, 2012 and 2013. If you die during that period, only the contributions treated as made in future years are included in your estate (i.e. if

[1] This amount is adjusted annually for inflation. However, the amount is rounded down to the nearest thousand so that there will be no increase until the annual inflation adjustments increase the annual gift tax exclusion to $14,000.

you died in 2011, the $26,00 treated as made in 2012 and 2013 are included in your estate). The rule essentially allows you to "front load" your gifts and move all the growth and income from your estate to your children or grandchildren without gift or estate taxes.

In 2010, any transfer of money or property in trust is a taxable gift unless the trust is treated as wholly owned by the donor or the donor's spouse. The IRS is interpreting this to change the rules only as it applies to transfers to trusts that would previously have been considered incomplete transfers and thus not subject to gift tax under pre-2010 law. See Internal Revenue Code §2511(c) and Notice 2010-19, Internal Revenue Bulletin 2010-7.

New Jersey Estate Tax

Before the tax law changes in 2001, New Jersey's estate tax was equal to the maximum allowable state death tax credit under federal law (reduced by any New Jersey Inheritance Taxes, discussed below). The credit against federal estate taxes was for any state death taxes that were paid by a decedent's estate or heirs up to a maximum amount. For example, if you had a $1,000,000 estate, the federal estate tax would have been $125,250, and the maximum state death tax credit was $33,200. Therefore, instead of writing a check to the Internal Revenue Service for $125,250, you would pay $92,050 to the IRS and $33,200 to New Jersey.

The federal tax law changes removed the state death tax credit, therefore, under New Jersey's (and almost every other state) formula, the New Jersey estate tax was reduced to zero. Faced with this loss of revenue, New Jersey (and almost every other state) changed their estate taxes.

New Jersey now imposes an estate tax equal to the federal state death tax credit under the law in 2001, when the federal estate tax exemption was $675,000. In rough terms, this means that there is a New Jersey estate tax of approximately 10% on all estates over $675,000 (after applying the marital and charitable deductions).

The following chart gives you some examples of the amount of the New Jersey estate tax on different size estates.

Taxable Estate	New Jersey Estate Tax
$1,000,000	$33,200
$1,500,000	$64,400
$2,000,000	$99,600
$3,500,000	$229,200

There is also a credit that reduces the New Jersey estate tax by the amount of any New Jersey Inheritance (but not below zero).

New Jersey Inheritance Tax

The New Jersey Inheritance Tax is based on the relationship of the person receiving the inheritance to the decedent.

Class A beneficiaries: There is no tax on spouses, domestic partners, issue (children, grandchildren, great grandchildren, etc.), and lineal ancestors (parents, grandparents, great grandparents). There is also no tax on property passing to charities.

Class C beneficiaries: Siblings, daughters-in-law and sons-in-law have a $25,000 exemption. Above that amount, the tax rate starts at 11% and goes up to 17%.

Class D beneficiaries: Everyone else is a Class D beneficiary. If a Class D beneficiary is left less than $500 there is no tax. If a Class D beneficiary is left more than $500 the entire amount is taxed at rates starting at 15% and going up to 16%. For example, a Class D beneficiary inheriting $499 receives $499 (no tax). A Class D beneficiary inheriting $500 receives $425 ($500 times 15% equals $75 tax).

Class E beneficiaries: There is no tax on charities.

Estate Planning

Document 1 - Last Will and Testament

A Last Will and Testament sets forth where your assets go after you die. It can name individuals, trusts, charities or any combination of those. Typically, in your Will you will appoint an executor, and, if any trusts are created, trustees. Your Will should also name guardians if you have minor or unemancipated children. When you have a properly prepared Will:

1. You decide who will raise your children, not the Court.

2. You decide who inherits your money, not the State—your assets don't go to any one you don't want to receive them.

3. You can leave your children's assets in trust where you set the terms so the money isn't held by the Surrogate in a CD and given to your child when they are 18 years old. You decide what your money can be used for and when your children will get control.

4. Even if you don't have minor children, you can leave a person's inheritance in trust to protect those assets from creditors, spouses, to reserve government benefits, and to protect the beneficiary from his or her own poor judgment.

5. You name people you trust to manage and invest your beneficiaries' inheritance and follow your instructions as to what your money can be used for and when your beneficiaries will get to control their inheritance.

6. You name someone you trust as an executor to oversee your estate instead of the Court picking an administrator.

7. You can save thousands of dollars so the people you want to receive your money get more of it and not the Court, bonding companies, and others.

8. You can pay less tax. New Jersey has an estate tax once your assets exceed $675,000 (including your home, life insurance and retirement plans).

A simple mistake can change who receives part of your estate and could add significant costs. It is important to have an attorney who practices extensively in this area prepare your Will.

To give just one example, a properly drawn Will will have a "tax allocation" clause. It directs who pays any taxes on your estate and any inheritance taxes. Many Wills direct that all taxes are paid out of the "residuary of your estate (what is left after paying creditors, specific bequests of property and after all jointly owned assets pass to the joint account holder and all assets with a beneficiary designation are paid to the named beneficiaries. If you do not give <u>all</u> of your assets in the same proportion as you divide your residuary estate, then the people who receive your residuary estate end up paying the taxes on other people's inheritance. If you leave an account or a home worth $500,000 to child 1 and the rest of your estate worth $500,000 to child 2, child 1 would receive the $500,000 and child 2 would pay out of his or her share approximately 50,000 in taxes and administration expenses and all your debts, including unpaid medical bills, credit cards, and utility bills.

<u>Executors</u>. The Executor is the person who carries out the directions in the Will for distributing your assets. The Executor is responsible for finding all your assets, making sure that any necessary tax returns are filed and making decisions that will affect

the taxes paid, and, in some cases, who among your beneficiaries pays those taxes. Lawyers and accountants often call these decisions “tax elections.” Executors can hire accountants, lawyers, investment advisors, etc. to assist them in doing this. Once the assets of the estate have been distributed as specified in your Will, your Executor's job will end. You should choose the person or people (or corporate trust department) who you think will do the best job as Executor or Co-Executors.[2]

Guardians. Perhaps the most difficult question that you may face in preparing your Will is deciding who will raise your children if something were to happen to you. Factors to consider include the age of your children, the age of the potential guardians, whether their ideas on child rearing are compatible with yours, religion, geographic location, continued accessibility of your children's relatives and friends, and educational and cultural opportunities or limitations.

Trustees. A Trustee is a person or corporation that holds money and other property on behalf of one or more other people. The Trustee follows specific written directions as to what the Trustee is to do with the property. Those directions are given in a Will or trust agreement. You may name whomever you trust to carry out your wishes regarding the property put into the trust. The Trustee’s job may last many years. It involves making investment decisions, record keeping, filing annual tax returns, and giving the beneficiaries an annual accounting of her actions. The Trustee may also be required to make decisions as to when to give or withhold the trust’s money from the trust’s beneficiaries.

Trust. A trust is an arrangement created by one or more people (the Settlors or Grantors) containing assets (Corpus) managed by one or more people or entities (the Trustees) for the benefit of one or more people or entities (the Beneficiaries).

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[2] If there is no Will the person who does this is appointed by the Court and is called the administrator.

A Revocable Trust can be changed or revoked by the Grantor. An Irrevocable Trust cannot be changed or revoked by the Grantor.

A grantor trust is a trust where the grantor has retained certain rights or interests. The grantor is taxed as if the trust property were owned directly by the grantor. See Internal Revenue Code §§671 through 679. While it files a return, all items pass through to the grantor. A revocable trust is a grantor trust.

A "simple" trust requires all its income to be paid out currently. The income beneficiaries are taxable on the trust income whether or not actually distributed to him o her, and the trustee should give a k-1 to each beneficiary each year.

A "complex" trust does not require all its income to be paid out currently. The beneficiaries are taxed on their share of the trust's distributable net income distributed to them and the trust is taxed on undistributed net income.

Testamentary Trust. A trust created by a person under her or his Last Will and Testament.

Inter Vivos Trust. A trust created by a Grantor during the Grantor's lifetime.

LIFETIME PLANNING

Many people recognize the importance of having an estate plan for when they die. However, it is also important to do "lifetime planning" to deal with aging, illness or incapacity, including the potential need for long-term care.

Document 2 - Power of Attorney

You should have a durable power of attorney to allow a designated person or people to handle legal, tax and financial matters for you if you become partially or completely unable to handle your own affairs due to age, diminished capacity or absence (such as an extended trip).

The alternative to a power of attorney is a costly court proceeding to declare you incapacitated or as having diminished capacity. A guardianship requires filing a complaint in the Superior Court of New Jersey, having 2 qualified psychiatrists examine you and certify that you are incompetent or have diminished capacity, a Court appointed attorney to represent you, meet with you and give a report to the Court, and possibly a hearing with all these professionals present. The Court will then decide if a guardian is to be appointed and if so, who is to be guardian and what the guardian can and cannot do. There may be a dispute among your relatives as to who should serve and the Court will then decide who to name, including an attorney or other person not related to you. The guardian must post a bond (essentially an insurance policy) with annual premiums and must give an annual accounting to the Court of all income and expenses and your health. The guardian is entitled to be paid for his or her services. All of these Court costs, professional fees, guardian's fees and expenses are paid from your assets.

A properly drafted durable power of attorney avoids these hassles and expenses. In addition to saving time and money by avoiding court proceedings, a power of attorney lets you choose the person or people who will act on your behalf rather than the Court. You can revoke your power of attorney at any time during your lifetime as long as you are competent. The power of attorney ends on your death.

The person granting the power is called the "principal." The person you appoint is called the "attorney-in-fact" or "agent."

There are different types of powers of attorney:

A. Limited versus General: A power of attorney can be general or limited. A limited power of attorney only lets the person you name do specific things. It can be limited to one bank account or signing documents for you at a real estate closing. A

general power of attorney permits the agent to handle all financial matters. Despite stating that the attorney-in-fact may do anything that you could do, certain powers need to be specifically provided. These include banking powers, the ability to deal with real estate, signing tax returns and otherwise dealing with the IRS and other tax authorities, gifting, and Medicaid planning.

B. Durable versus Non-durable: A "durable" power of attorney expressly survives the principal's future incapacity. A non-durable power of attorney ends when the principal is incapacitated and therefore personally unable to revoke the power.

C. Springing versus effective immediately: A power of attorney can be set up so that it only takes effect when you are incapacitated. This is called a "springing" power of attorney. The power of attorney can also be made effectively immediately.

Each power of attorney is one from A, one from B and one from C. For example, a general, durable power of attorney that is effective immediately.

If you have a power of attorney for "lifetime planning" it should be a general, durable power of attorney. The big question is should it be springing or effective immediately.

The major concerns with a springing power of attorney are:

(1) The powers can be misused;

(2) determining when you are incapacitated and getting a doctor to certify that you are incapacitated;

(3) it is not effective unless you are incapacitated so it is not effective if you have diminished capacity or just need help doing your banking or paying bills; and

(4) people and banks may be reluctant to accept it without a recent certification that you are (or are still) incapacitated.

The major concern with a power of attorney that is effective immediately is that it may be used before you intended and that it may be misused.

Document 3 - Living Will (Health Care Declaration) and Medical Power of Attorney

1. From one of my articles in the West Essex Tribune:

Schiavo case illustrates importance of a living will

The case of Terri Schiavo is truly a double tragedy. First, Terri collapsed in 1990 when she was only 26 years old. Second, her family has fought for years over what her wishes were for life support. Yet this second tragedy could have been easily avoided and her true wishes followed if Ms. Schiavo had a living will (health care declaration). This legal document lets you express your desires regarding your medical treatment and whether or not to withhold life support and nutrition. You also appoint someone to make sure your wishes are followed if you become unable to make those decisions yourself. Terri could have saved her family the added agony by having a living will expressing her wishes.

2. From the Bergen County Surrogate's Office:

ADVANCE DIRECTIVES FOR HEALTH CARE

Instruction Directives

All adults have the fundamental right to control their own medical care, including the decision to utilize or terminate artificial, extraordinary or heroic medical treatments that only prolong the process of dying. This right is normally exercised by competent patients giving (or withholding) consent for treatment when such treatment is proposed by their physicians or the facility in which they are receiving care.

Unfortunately, many patients lack the mental capacity or physical ability during the course of their medical treatment to communicate with their physicians. These patients are no longer able to make their own health care decisions directly.

In New Jersey pursuant to N.J.S.A. 26:2H-53 an advance directive for health care can be drafted and executed prior to a disabling illness or accident, providing a mechanism for health care decisions when the person lacks capacity to make those decisions. This Instruction Directive must be in writing witnessed by two adults or acknowledged by a Notary Public. The directive contains the person's personal wishes regarding health care in the event of a loss of decision making ability. The directive becomes effective when transmitted to the attending physician or to the hospital and the person is medically determined to lack capacity to make health care decisions. An attending physician's determination that a patient lacks decision making ability must be confirmed by another doctor.

If you regain your ability to make medical decisions at a later time you may resume making your decisions directly. The Instruction Directive is in effect only as long as a person is unable to make health care decisions. The Instruction Directive may be modified in whole or in part at any time by a legally competent individual. You should review your directive periodically and update it whenever you feel it no longer accurately reflects your wishes. The directive should also be revisited if a serious health issue develops which should be addressed. An Instruction Directive regarding health care may be revoked in writing or orally.

Proxy Directives - Appointing a Health Care Representative

Another way to control your future medical care is to designate a person, whom you trust understands your health care wishes, to act as your agent. This designee, known as a proxy, is granted the legal authority to make medical decisions for you if you are unable to make such decisions for yourself. If you become incapacitated and cannot make your own decisions, your chosen proxy (also known as your "Health Care Representative") will serve as your substitute. The proxy is your representative in

discussions with your physician and others responsible for your care when you are unable to communicate your wishes. In order to be effective in New Jersey, the Proxy Directive appointing the health care proxy must contain clear language stating that it is to be used for such an appointment. Many medical powers of attorney found at stationery stores, discount supply houses and bookstores do not meet these requirements. Therefore, you should be cautious about signing any such documents without professional oversight.

This Proxy Directive, as in an Instruction Directive, must be witnessed by two individuals, or acknowledged before a Notary Public.

The completed Proxy Directive should be treated as any other important legal document. It is important that copies be given to physicians, family members and friends, but care should be taken that the original document be readily available and its whereabouts known to family members. A safe deposit box is not an appropriate place to keep an Instruction Directive or Proxy Directive, as it cannot be retrieved except during banking hours.

Document 4 – Revocable (Living) Trust – The One You Do NOT Need

COMMITTEE ON ATTORNEY ADVERTISING
Appointed by the New Jersey Supreme Court

OPINION 25
Living Trusts

This matter originated as a result of several grievances filed by members of the bar against an attorney who caused flyers regarding living trusts to be published in various newspapers. The grievances alleged that the flyers contained numerous statements that were either actually or potentially misleading in violation of RPC 7.1(a)(1). Upon completing its initial review, the Committee determined that the flyers violated RPC 7.1(a)(1). A formal Complaint was filed, and the Committee and Respondent ultimately entered into a Stipulation of Facts and Discipline. However, during the course of this investigation, the Committee received additional grievances alleging that other

attorneys were employing similar advertising and marketing techniques. Consequently, the Committee concluded that the pervasiveness and nature of the conduct warranted a formal advisory opinion. The purpose of this opinion is to place attorneys on notice that if they undertake to include specific advice and statements about the law in their advertising, they should exercise great care to ensure that the statements they make are accurate and not in any way misleading.

The flyers, published under the headline "New Jersey Law Firm Reveals Important Facts You Should Know About Living Trusts," provided general information about living trusts and invited the reader to attend a free seminar. In an effort to extoll the virtues of living trusts, at the expense of more traditional estate planning tools, the following statements, which the Committee found to be misleading and improper, were made:

1. What they do in probate court is decide if your will is valid, handle disputes, distribute assets and tie up any loose ends. The problem with it is ... it can be incredibly expensive, time consuming, and a total invasion of privacy.

Very few probate matters are actually heard in Superior Court, Probate Part. Ordinarily, an executor of an estate will present an application for probate of a decedent's will at the County Surrogate's office. The executor may appear *pro se* and, assuming there are no irregularities on the face of the will and no caveat is filed, the Surrogate will issue letters testamentary to the executor within one to two weeks of the executor taking the oath of office. This being the case, the process is not all that time consuming.

As a general rule, an action to determine the validity of a will in Superior Court, Probate Part, is an extremely rare occurrence, taking place only when a caveat has been filed, there is an irregularity on the face of the will, or where formalities for the execution of a will were not satisfied by the decedent. It should also be noted that living trusts are

also subject to the jurisdiction of the Superior Court, Probate Part, and may be challenged by any disgruntled persons or interested parties.

Additionally, neither the Surrogate nor the Superior Court distributes assets. It is the executor of the estate who distributes the assets of the estate. No court order is required to make a distribution or series of distributions. The Superior Court may, in a will contest, order a distribution or direct an executor to withhold distributions, but this is a rare occurrence. Simply stated, the Surrogate and Superior Court judges do not distribute assets, "tie up loose ends," or in any other way take an active role in the administration of estates.

Finally, the costs associated with the probate process are relatively low. In fact, the average cost is approximately $74, with additional Surrogate's certificates available at a cost of $3.00 per certificate. It is also possible that there will be no payment of attorney's fees if the executor/executrix undertakes the probate process *pro se*.

2. Every curious neighbor, disgruntled relative, and con artist around is welcome to examine every detail of your finances - and what you left to whom.

Details of a decedent's finances will not be found in the application to probate the decedent's will, which is kept on file and is available for inspection at the Surrogate's office. Nor will they necessarily be found in the will itself. Only if the will is contested, and the court orders that an inventory of the estate be conducted or an accounting filed, will such details be open to inspection.

Additionally, if an individual dies with assets held by the trustee of a living trust, and also owns assets in his or her individual name, the executor of the estate will still be required to probate a will in order to transfer title to those assets. The will, which generally pours the probate assets into a living trust established by the decedent, will be available for inspection at the Surrogate's office and give notice that the decedent created a living trust.

3. When your beneficiaries finally get the property that's rightfully theirs, they may have to pay out a large percentage of it in lawyer's fees.

The administration of a living trust is virtually identical to the administration of an estate. The only differences are that a will must be probated in an estate administration and the executor must gather the decedent's assets. Only if the decedent transferred all of his or her assets to a living trust prior to his or her death would probate be unnecessary. In most cases, a will is still part of an overall estate plan and will be subject to the probate process.

Assuming an attorney charges a fee for services on the basis of billable time, there will be a very small differential between the cost of administering a probate estate and the cost of administering the assets of a living trust. In fact, if the costs of establishing and funding a living trust are added to the cost of preparing the will and administering the trust, they may actually exceed the cost of preparing the will and administering the probate estate.

4. If you're married and you create a living trust now, you can actually *double* the amount you will be able to pass on to your children -- to $1.2 million.

At the time the advertisements were published, the exemption equivalent against the federal gift and estate tax was $600,000 per person (the "unified credit"). This exemption was, and in a higher amount still is, not limited in its availability to those individuals who establish a living trust. If a married couple (1) titles assets so that each person has at least $600,000 in his or her individual name and (2) has a will prepared which either leaves assets to persons other than the surviving spouse or leaves the assets in a testamentary trust for the benefit of the surviving spouse which is designed to take

maximum advantage of each person's unified credit, then the married couple will be able to leave $1.2 million to their heirs completely free of federal estate tax.

5. More and more, the biggest problem you face as you grow older, is not so much what happens when you die, *but what happens when you can't take care of yourself*. An increasing number of Americans each year are suffering accidents, strokes, and affliction such as Alzheimer's disease that are forcing them out of control of their lives and finances. In such a situation, before you or your family could even *touch* any of your assets - to take care of you or support themselves - someone would have to be appointed your legal guardian. This is done through a legal process called *guardianship* which, like probate can be extremely costly, time- consuming, and upsetting to all involved. And after its done, scrupulously accurate financial reports must be filed for the rest of your life. The good news is, also like probate, you can *completely eliminate the chance of this ever happening to your family* by setting up a living trust.

The creation of a living trust does not prevent any party in interest from filing a petition in Superior Court to have an individual declared incompetent. Moreover, the ability to place control over one's assets in the person or persons of one's choice is also available through the use of a durable power of attorney.

Based upon the foregoing, the Committee holds that the aforementioned language is misleading and may not be included in flyers, targeted direct-mail solicitation letters, or any other forms of advertising or solicitation.

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Medicaid

Medical Qualification Rules

There is Medicaid coverage for people who are: 65 years of age or older, blind, disabled, under 18 years of age, pregnant, or in a welfare to work situation, and if the applicant (or, for a minor, the minor's family) meets the financial qualifications discussed below.

To be medically qualified for Medicaid the applicant must be blind or disabled as defined under Social Security Disability Income regulations. There is a separate test for nursing home care. To have Medicaid pay for nursing home care, the applicant must need to show that nursing home care (or under certain waiver programs, that community/in home care) is medically required. The test is whether the applicant needs assistance with at least two activities of daily living without assistance:

- Eating
- Dressing
- Bathing
- Transferring (Walking)
- Toileting
- Continence

Financial Qualification

Medicaid is a poverty based program. Therefore, an applicant's income and assets must be below certain levels. These amounts are adjusted annually based on Federal poverty level guidelines.

Income

The income limit for Medicaid is currently $2,022.00. If the Medicaid applicant has more income than that, he or she might be eligible for New Jersey's Medically Needy program if they (1) would except for having too much income qualify for Medicaid, and (2) their income is less than their nursing home and medical bills. The Medically Needy

program has somewhat more limited coverage and covers the gap between the applicant's income and nursing home and medical bills.

Assets

Medicaid recipients are allowed to have up to $2,000 in non-exempt assets. Under the Medically Needy program, recipients are allowed to have up to $4,000 in non-exempt assets.

Exempt assets

1. Home equity up to $750,000. The home must be the applicant's principal place of residence. For a nursing home resident, there must be some "intent to return home" even if this never takes place. If the home is vacant for more than 6 months, then it is no longer considered an exempt asset.
2. Personal belongings and household goods.
3. Engagement and wedding ring.
4. $2,000 ($4,000 under the Medically Needy plan).
5. One car or truck. However, the value of the vehicle is limited to $4,500 and any excess is counted as an available resource. However, if the car is used for medical transportation or transportation in connection with employment, the entire value of the car is an exempt asset.
6. Burial spaces and certain related items for applicant and spouse.
7. Up to $1,500 designated as a burial fund for applicant and spouse.
8. Irrevocable prepaid funeral contract. However, the amount in the contract must be reasonable and any amounts not spent on the funeral must be distributed first to repay Medicaid benefits received by the applicant/decedent.
9. Value of life insurance if face value is $1,500 or less. If it does exceed $1,500 in total face amount, then the cash value in these policies is countable.

Medicaid Planning

Here are a few basic strategies for qualifying for Medicaid. Essentially, it involves converting "countable resources" to exempt assets. Also, proper planning, execution and follow through are required to make these techniques work. Timing of when certain planning techniques are done is also important. There are also other planning techniques that can be used to qualify for Medicaid.

1. Purchase long term care insurance.
2. Gift assets and wait at least 5 years and 1 day before applying for Medicaid. Use your own remaining assets and long term care insurance to pay the nursing home bills during that period.
3. Transfer of home to a qualified caregiver child.
4. Transfer of home to a disabled child.
5. Prepay your funeral using an irrevocable prepaid funeral contract.
6. Sell or gift a remainder interest in your home to a child or children.
7. Buy a Medicaid qualified annuity for the "well" spouse.
8. Written caregiver agreements.

Many of these legitimate techniques are being challenged by the New Jersey Division of Medical Assistance and Human Services ("DMAHS") and that the law and regulations, and how Courts and DMAHS are interpreting the laws and regulations, are constantly changing. What was a good planning technique at the time these materials were written may no longer be valid and new planning opportunities may have become available.

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Jonathan Bressman is a member of the National Association of Elder Law Attorneys, the Real Property, Probate & Trust Law and the Taxation sections of the American Bar Association and the Real Property, Probate & Trust Law, Elder Law and Taxation sections of the New Jersey State Bar Association. He is a graduate of Lehigh University with a B.A. in English and was an officer in the Sigma Tau Delta English Honorary Society. He earned his law degree from Temple University School of Law. Mr. Bressman has been a member in good standing of the New Jersey Bar since 1988.

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