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HEALTH

## **Medicaid Gets Tough**

by Mary Beth Franklin

*Prepare to pay for your own long-term care.*

William Zatlin, 90, of North Babylon, N.Y., may not realize it, but his bed in a Long Island nursing home costs about \$11,000 a month and wiped out his cash savings in less than a year. It's just as well that the disabled World War II veteran, who suffers from dementia, doesn't know his two daughters had to sell his home in order to pay for his care. Zatlin could have kept the house and applied for Medicaid once his money was gone. But his daughters could no longer afford to pay the utility bills and property taxes on the empty home.

The sale of Zatlin's house was completed after a new medicaid-reform law took effect in February, making it much tougher to qualify for government-paid long-term care. As a result of the new law, Zatlin's daughters have few options but to continue writing checks to the nursing home at a rate of \$132,000 a year for as long as their father lives -- or until all of his money is gone.

Under rules that were in effect until February, Zatlin's family might have been able to retain nearly half his money, transferring some of it to relatives and using the remainder to pay the nursing-home bills long enough to satisfy the penalty period for transferring assets before medicaid picks up the tab. But under the new law, that fast-track, "half a loaf" strategy to qualify for government-paid nursing-home care, which could have shaved a year off the family's obligation to pay privately, is now history.

Elder-law attorneys, who have prospered by showing middle-class families how to tap medicaid without depleting all their assets, say they feel for people on the wrong side of the deadline. "It seems so unfair that by virtue of just a few weeks, this family will probably not be able to retain any money" from the house, says Felicia Pasculli, a lawyer from Bay Shore, N.Y., who is representing Zatlin and his two daughters, Barbara Leun and Kathleen McGrath.

### **No free lunch**

Leun, 58, says her father would be devastated if he knew what had happened to his home of 50 years. A retired teacher who lives next door to her childhood home, Leun cared for her father until his admission to the nursing home last year. Although Zatlin no longer

recognizes his children, Leun visits him nearly every day. "He wanted that house to be a legacy for us," she says. "Now that's not going to happen."

That's exactly as it should be, says Stephen Moses, president of the Center for Long-Term Care Reform, a Seattle advocacy group that has led the charge for tougher rules that restrict medicaid to the truly poor instead of allowing it to be used as what Moses calls inheritance insurance for baby-boomers. He says Americans can no longer ignore the stupendous costs of nursing-home care or count on a government bailout. "There is no more free lunch for long-term care," says Moses, who believes that unless things change, the future needs of today's middle-aged baby-boomers will destroy an already overburdened medicaid system.

Whether you believe families should be able to preserve assets for an inheritance or think it's only fair that they spend those assets on a family member who requires a nursing-home stay, the new medicaid-reform law alters how you should plan for long-term care and how you will have to pay for it. If you don't own a long-term-care insurance policy -- or if you rejected the idea before -- you should seriously consider getting one now (see [A Fresh Look at Long-Term Care](#)).

Also, in a major policy shift, seniors are now being encouraged to use their home equity for long-term care. Under the old law, a house was not considered an asset for medicaid purposes if the owner planned to return home or a spouse was still living there. Only if both spouses died could medicaid force the sale of the property to recover the cost of care.

Medicaid retains this right to estate recovery under the new law, but it has a new weapon in its arsenal for battling runaway costs. Medicaid can require individuals (but not married couples, if a spouse remains in the house) to tap any home equity in excess of \$500,000 to pay for their own care. They can do this by selling the property, borrowing against the equity or using a reverse mortgage. Older homeowners in regions that have seen enormous appreciation in real estate values are likely to be affected by the new equity cap.

Reverse mortgages allow homeowners 62 and older to borrow a portion of the equity and receive payments in a lump sum, as monthly income or via a line of credit. No repayment is due until you move, die or sell the house. But a reverse mortgage, which involves heavy up-front fees, makes no sense if a senior has to move into a nursing home after only a few years.

To stay at home longer and make the best use of a reverse mortgage, seniors could use the money to add ramps or refit bathrooms to accommodate a wheelchair. Home equity can also pay for in-home assistance. As a result, says Peter Bell, president of the National Reverse Mortgage Lenders Association, the law may create greater demand for quality home-care services and help keep seniors out of nursing homes.

## Who's eligible

Medicaid, jointly funded by federal and state governments, is intended to provide health care for the poor. But it has become the major source of financing for long-term care, paying nearly half of all nursing-home bills in 2003, according to the Centers for Medicare & Medicaid Services (CMS). Rising health-care costs and a growing elderly population are already straining state budgets, with medicaid representing the single largest expenditure by the states, surpassing even education. One of three medicaid dollars goes toward long-term care.

The annual cost of nursing-home care averaged more than \$74,000 nationwide in 2005 and far more in places such as New York and California. Because care is so expensive, more than half of nursing-home residents end up qualifying for medicaid assistance either immediately or in a few months, after they've burned through their savings. Most states require nursing-home residents to spend virtually all of their assets, down to \$2,000, before they can qualify. Married couples have higher asset allowances as long as one spouse is healthy enough to remain at home.

Once nursing-home residents are eligible for aid, they receive a personal-needs allowance of \$30 per month. All their sources of income, such as pensions and social security checks, must be turned over to medicaid to pay for their care. Those rules remain the same under the new law.

The new law extends the "look-back" period, during which medicaid can scrutinize financial transactions, from three years to five. If you give away money or property during the five-year look-back, it triggers a penalty period during which you're ineligible for medicaid assistance.

In the past that wasn't so onerous because the penalty period began the day you *transferred* the assets and often expired before you were admitted to a nursing home. Now, however, the penalty begins the day you *apply* for medicaid, which by definition means you have already spent virtually all your money and need public assistance to pay the bills.

To determine how long you would be ineligible, divide the amount of money or the value of the asset you gave away by the average cost of a month's stay at a nursing home in your area. Let's say you gave away \$70,000 to family members and the average nursing-home cost is \$7,000 a month. You would be ineligible for medicaid assistance for ten months from the time you apply.

## Stricter rules

A real-life example helps illustrate the changes. John Lecrone, 83, has been paying more than \$6,000 a month to care for his 80-year-old wife, Betty. Under medicaid rules, the healthy spouse can retain half of a couple's assets up to about \$100,000, plus their home.

(If William Zatlin's wife were alive, his family might still own the Zatlin residence on Long Island.)

Late last year, Lecrone asked lawyer Robert Clofine for advice on how best to deploy his assets. Clofine told Lecrone that he was permitted to use his and Betty's savings to replace his old car and repair their home in York, Pa. That would reduce his assets, and his responsibility for paying the bills for Betty's care, before medicaid would take over. Those rules don't change under the new law. But Clofine also advised Lecrone that if he wanted to give money to his two grown children, he should act before the law changed in February.

Taking Clofine's advice, Lecrone spent about \$35,000 on a new car and home repairs, and gave each of his children \$6,000. Because he made the gifts before the new rules took effect, he was able to give the money to his children instead of to the nursing home. Under the new law, however, that \$12,000 -- the cost for two months of Betty's care -- would delay her medicaid eligibility by an additional two months after she applied for help. Her husband would have to come up with an additional \$12,000 of his own money before medicaid took over her bills.

The new law is likely to crack down on intentional asset-shifting. But seniors could unwittingly run afoul of the regulations. Suppose, for example, that a grandmother gives her grandchild money for college. Three years later she suffers a stroke and needs nursing-home care. That gift would block her from receiving medicaid immediately, even though she didn't intend to circumvent any rules.

The best way to avoid such a situation is to hang on to your money unless you're positive you won't need nursing-home care -- or need help paying for it -- for at least five years. "We're afraid it's going to have a chilling effect on people who want to help their families or give to charities," says David Certner, of AARP.

In the past, says the Congressional Budget Office, few applicants incurred penalties for prohibited asset transfers. Under the new rules, the CBO estimates that about 120,000 people a year, or 15% of new applicants, will be affected, either because they violate the new transfer rules or because they decide not to give away assets. That should save the federal government about \$2.5 billion over five years. States would save billions more.

Keep in mind that if you gave away assets before the new law took effect, you're covered by the less-restrictive three-year look-back and the more liberal penalty period.

## **Protect yourself**

Another effect of the new medicaid restrictions will be to encourage people to buy long-term-care insurance while they are young and healthy. That leaves out those who are already too old or sick to qualify and those who cannot afford the premiums, says Bonnie

Burns, a consumer-health advocate in California. But many of them may be poor enough to qualify for medicaid immediately or soon after they exhaust their assets, as long as they don't violate the asset-transfer rules. Currently, only six million Americans have private long-term-care insurance. In most states, less than 10% of the 50-and-older population has coverage.

Having long-term-care insurance has always been preferable to relying on medicaid because it gives you more options in choosing a nursing home. The new law offers other incentives for buying such insurance. It authorizes states to offer long-term-care partnership programs that promise consumers asset protection in exchange for purchasing insurance (see the box below). "This is the biggest catalyst for long-term-care insurance in years," says Phyllis Shelton, president of LTC Consultants, a training firm for long-term-care insurance agents in Hendersonville, Tenn. "People won't buy insurance to pay for long-term care if they think it's free under medicaid. Now they'll know it's not."

If you can't afford to pay and medicaid won't, then who will? Rest assured that if you're poor enough from the outset or you exhaust your savings on nursing-home bills, you'll still qualify for government-subsidized care. Only if you run afoul of the new asset-transfer rules -- by giving away money or property within five years of applying for help -- would there be a waiting period after you apply for assistance.

Critics have nicknamed the new law the "nursing-home bankruptcy act," claiming institutions might be stuck providing unpaid care. This might tempt nursing homes to dump indigent residents on hospitals, using a minor illness as an excuse to free up a bed for a paying customer.

Some opponents of the law have even raised the specter of "filial responsibility," saying it's possible that states might dust off old laws holding adult children liable for the debts of their destitute parents. Although 30 states have such laws, it's highly unlikely that any would try to enforce them.

Bottom line: The poor will be protected, but families who have money will have to spend more of it if a loved one needs nursing-home care.

## PROTECT YOUR ASSETS

### **Help form the states**

For nearly 15 years, four states -- California, Connecticut, Indiana and New York -- have participated in a partnership program that encourages consumers to buy long-term-care insurance in exchange for partial protection of their assets in the event that they exhaust their insurance benefits and must turn to medicaid. For example, if you bought a three-year policy with a \$150-a-day benefit providing more than \$164,000 worth of long-term-care coverage (\$150 multiplied by 1,095 days), you could protect

a like amount of your assets and still qualify for medicaid assistance.

In 1993, Congress banned other states from following suit, although more than 20 had expressed interest. The new medicaid law lifts that ban, although it could take a year or more before states are ready to offer partnership programs. In the meantime, don't wait for your state to act if you're considering buying long-term-care insurance. The older you are, the higher the premium.

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