

Winter August 2012

Ethical Issues in Medicaid Planning

C. Michael Shallowy

Follow this and additional works at: <https://scholarship.law.marquette.edu/elders>



Part of the [Elder Law Commons](#)

Repository Citation

Shallowy, C. Michael (2012) "Ethical Issues in Medicaid Planning," *Marquette Elder's Advisor*. Vol. 1: Iss. 3, Article 10.

Available at: <https://scholarship.law.marquette.edu/elders/vol1/iss3/10>

This Featured Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Elder's Advisor by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact elana.olson@marquette.edu.

Ethical Issues in Medicaid Planning

Understanding the fairness exceptions to Medicaid and using them appropriately is an ethical and honorable way to help elders avoid the devastating financing consequences of long-term nursing home care.

By C. Michael Shalloway

There is no universal agreement as to what is ethical and what is not. Philosophers, theologians, and learned people throughout history, sometimes in goodwill and sometimes not, have held and espoused differing opinions. I certainly do not expect to change others' deeply held honest opinions that may be contrary to my own. I can only speak for myself and from the perspective of my personal values and beliefs. To me, planning for Medicaid eligibility and asset protection with self-respect and high ethical standards is achievable.

Most older folks are uncomfortable getting something for nothing. They are happy to pay their fair share for the blessings bestowed by being an

American. Our government has established Medicaid rules, and fairness exceptions to those rules, that are designed to allow Medicaid recipients to get quality long-term nursing home care and pay their fair share.

Medicaid recipients do not get a free ride. Everyone is required to pay a resident's responsibility share, which amounts to almost all of the resident's income. Only \$35 of the resident's income per month is left to him or her for personal use. If the nursing home resident has a healthy spouse whose independent income is too low to live on, the spouse may obtain a portion of the nursing home spouse's income to live on and to prevent impoverishment.

We should also bear in mind that Medicaid is a government program, and most of the elderly, through their tax dollars, have financially supported all aspects of our government throughout their earning years. Why should the infirmity of old age and ill health allow that government to strip the elderly of their life's efforts, dignity, and self-esteem?

There is a myth that the very wealthy can artificially impoverish themselves to get on Medicaid. If that were true, it would be wrong and unethical. The reality is, however, that the use of Medicaid fairness exceptions to preserve assets and to qualify for Medicaid doesn't work for the very wealthy. The reason is that converting countable assets to noncountable assets by using the fairness exceptions allowed by Medicaid has tax consequences for the very wealthy that do not apply to those in the middle-class and lower tax brackets.

A lifetime of work and sacrifice to assure a good life for oneself and one's family could become, instead of an obtainable dream, a horrible nightmare were it not for the fairness exceptions to the Medicaid rules that prevent illness from robbing

C. Michael Shalloway is an elder law attorney and former administrative judge for Palm Beach County Court. He practices elder law with his son at the firm of Shalloway & Shalloway, PA, in West Palm Beach, Florida.

one of an entire life's efforts. For most people abandoned by good health, for whom life in a nursing home has become a reality, Medicaid is the only answer. Long-term care insurance is either financially or medically unobtainable, and the cost of private pay is out of reach for the middle-class elderly.

We are accustomed to strategies that reduce income taxes. We understand the difference between legitimate tax planning, including taking appropriate deductions and timing, and tax cheating. Often, however, in the Medicaid arena there is confusion about the distinction between legitimate planning to qualify for Medicaid and protect assets and Medicaid fraud.

Depriving a Medicaid recipient of dignity and self-esteem is inhumane and unacceptable. Our government has recognized this and intends that long-term nursing home care be available without making the recipient pay that price.

It is not uncommon for elderly parents and their adult children to approach the parents' estate planning differently. Often the adult children want their elderly parents to enjoy life, spend their money while they can, and not worry about leaving anything to their children or grandchildren. Overlooked is the message that such sentiments convey to aging parents. Instead of being grateful

for their adult child's attitude, they interpret it to mean they are no longer needed and that their grandchildren do not need them either. What they have worked and saved for all of their lives is unimportant to their family. Fairness exceptions have been built by our government into Medicaid law and rules in order to strike a balance between the elderly paying for their own care and preserving enough of their resources so that spousal impoverishment need not happen and so that loved ones can still be helped, even if on a reduced level.

Understanding Medicaid rules and the fairness exceptions provided by the government is the key to facing and coping with the devastating effects, both psychological and financial, of the need and cost of long-term nursing home care for the elderly and their families. It is the knowledge of how to appropriately use these government-approved fairness exceptions that an elder law attorney employs in helping those who are not superrich to stop the hemorrhaging of their resources both financially and emotionally, and to qualify them for Medicaid.

It is my own belief that it is both ethical and honorable to help moderate the financial and psychological devastation that can accompany the need for long-term custodial nursing home care by those who, through no fault of their own, need such care.