

ELDER & DISABILITY LAW NEWS

LEGAL INFORMATION FOR OLDER AND DISABLED MAINERS AND THEIR ADVISORS

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MISSION

The mission of Skelton Law Offices, LLC, is to provide legal services of the highest quality, professionally, efficiently and compassionately, with the goal of preserving the independence, the dignity, and the emotional and financial security of older and disabled Mainers.



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2003 MEDICARE ACT

On December 8, 2003, President George W. Bush signed into law the Medicare Prescription Drug Improvement and Modernization Act of 2003. The act is 678 pages long and has a projected cost of \$400 billion over ten years. The highlights of the Act include:

- Availability of a prescription drug discount card in the spring of 2004 for purchases at lower prices negotiated by Medicare until the prescription drug benefit starts in 2006. The annual enrollment fee is no more than \$30 and is waived for lower income applicants. The discounts are estimated to be 10-15%.
- Prescription drug coverage becomes effective in 2006. There will be several plans to choose from at a premium of about \$35 per month with a \$250 deductible. Medicare pays 75% of drug costs of up to \$2,250 annually; it pays nothing for annual expenditures from \$2,251 to \$3,600; it pays 95% of drugs costs after the individual has spent \$3,600.
- New benefits: (1) an initial preventive physical exam for new Part B enrollees; (2) screening for diabetes and cardiovascular disease; (3) coordinated care for people with chronic illnesses.
- Increase of 1.5% in payments to physicians.
- Linking the Medicare Part B premium to income for the first time, starting in 2007. Currently, individuals pay 25% of the Part B premium, and the federal government pays the rest. Beginning in 2007, those with incomes of more than \$80,000 will pay a larger percentage of the premium, capping the payment at 80% for those with annual incomes greater than \$200,000.

For more information, visit the Center for Medicare Education at www.medicareed.org or the official Medicare site at www.medicare.gov.

Myths About Medicaid Nursing Home Benefits

TRAPS FOR THE UNWARY

MYTH #1

Medicare will cover my nursing home bill

THE TRUTH:

Many people are surprised to learn that Medicare pays for only a small amount of the nursing home care provided in the United States. In general, Medicare covers the full cost of the first 20 days in a skilled nursing facility if the individual is admitted following at least a 3-day hospital stay and is receiving skilled care as opposed to custodial care. Medicare will cover a portion of the cost of the facility for up to 80 more days. The deductible for 2004 is \$109.50 per day. When the Medicare coverage ceases, the patient must pay out-of-pocket unless he or she has private long-term care insurance or qualifies for government benefits under the Medicaid program. In Maine, the Medicaid program is called MaineCare, and it is administered by the Department of Human Services ("DHS").

MYTH #2

I have to give away everything I own to get Medicaid

THE TRUTH:

An individual is permitted to own certain assets - called non-countable or exempt assets - and still be financially eligible for Medicaid. For example, a personal residence located in Maine, a motor vehicle, personal belongings, household furnishings, mortuary trusts, and \$8,000 in savings are typically not counted when an individual applies for MaineCare nursing home benefits. There are other categories of exempt assets, as well, and an elder law attorney can determine if they allow for the legitimate protection of certain assets from spend-down on long-term care expenses.

MYTH #3

If I give anything away I cannot get Medicaid

THE TRUTH:

MaineCare rules provide that in some cases an individual will be ineligible for nursing home benefits because of transfers of assets made by the individual or by the individual's spouse. But a lot depends on what is given away, to whom, when, and for what purposes. Some transfers of assets do not cause any penalty, like transfers from one spouse to the other spouse and certain transfers to disabled individuals. Other transfers create only short transfer penalties that have "run" by the time an individual applies for benefits. The rules are complicated. Consult an elder law attorney who knows the law.

MYTH #4

I have to wait 3 years after giving anything away to get Medicaid

THE TRUTH:

This is the most common - and unfortunate - myth. True, there is a 3-year lookback for some asset transfers under the MaineCare rules. This means that DHS will consider all transfers of property made within the 36 months preceding the date of an application for benefits. For transfers to trusts, the lookback is 5 years. Certain transfers are not penalized. For transfers that are not exempt and that occurred during the lookback, a transfer penalty calculation is applied. The "penalty" is a period of time that the individual is ineligible for MaineCare nursing home and assisted living benefits. Under current MaineCare rules the penalty divisor is \$3,917. The value of the transfer is divided by \$3,917, and the quotient is the number of months that the individual is ineligible for benefits.

MYTH #5

I can keep all our marital property and my inherited property when my spouse gets Medicaid

THE TRUTH:

When a married person applies for MaineCare nursing home benefits, assets in the name of either spouse or in the joint names of both spouses (his, hers or theirs) are considered by DHS. As explained above, some assets are exempt. In addition to the exempt assets, the healthy spouse can keep the Community Spouse Resource Allowance which is currently \$92,760 (as of 01/01/04). In certain cases, the allowance for the healthy spouse can be increased.

MYTH #6

If I put my property in my spouse's name, I will be eligible for Medicaid

THE TRUTH:

This currently is true in Maine for assisted living benefits, but when the application is for nursing home benefits, all of the assets are considered, regardless of how they are titled. However, the community spouse has 12 months to re-title assets from the name of the spouse in the nursing home (the "institutionalized spouse") into the community spouse's name. DHS explains these rules when an application is filed.

MYTH #7

If I enter a nursing home as a private pay resident, I must spend all my assets on my medical care and my nursing home bills before I can get Medicaid

THE TRUTH:

It is true that MaineCare nursing home benefits are only available to applicants who are financially eligible for those

benefits. But there are legitimate strategies for preserving assets for a healthy spouse and for other loved ones, even after a person has entered a nursing home or an assisted living facility. Unfortunately, there is a lot of misinformation, and many individuals are led to believe that once they enter a nursing home they have no choice but to privately pay for their care until all their assets are gone. This is a myth.

MYTH #8

My spouse or my agent under my Power of Attorney has the power to take property out of my name if I ever need Medicaid

THE TRUTH:

The best tool for planning for future MaineCare eligibility is a general, durable power of attorney for finances that includes gifting authority. Just being married does not mean one spouse is able to legally remove the name of an incapacitated spouse from real estate and bank accounts. And unless a power of attorney explicitly authorizes the agent to make gifts of the principal's property, the agent cannot re-title assets. Many powers of attorney do not contain gifting authority or, if they do, the power is inadequate. For instance, many documents have a gifting provision that limits the agent to making transfers of \$10,000 or \$11,000 per year per person. This figure is too limited for and irrelevant to effective Medicaid planning. Keep in mind that there are risks to giving authority to someone to make gifts of your assets. Your agent must be trustworthy and willing to become knowledgeable, if necessary, about you, your circumstances, and MaineCare rules. You may want to require in that agent make gifts consistent with your estate plan or that he consult an elder law attorney before making any asset transfers.

MYTH #9

I can only give away \$10,000 per year under Medicaid rules

THE TRUTH:

This figure was the "annual exclusion amount," and it has increased to \$11,000. This concept is important in planning to minimize the estate and gift taxes, but it has no relevance in planning for Medicaid eligibility. In 2004, federal estate tax law only applies to people who have more than \$1.5 million in assets. People who are concerned about estate and gift tax law rarely need to do Medicaid planning.

MYTH #10

My income may have to be used to pay my spouse's nursing home bill

THE TRUTH:

This is not true in Maine.

MYTH #11

All of my spouse's income must be used to pay the bill if my spouse is on Medicaid in a nursing home

THE TRUTH:

The law allows the community spouse to keep some of the institutionalized spouse's income if the community spouse's income is below certain limits. In addition, the community spouse may be entitled to a greater allowance if her own income is insufficient to maintain the home.

MYTH #12

I can hide my assets and be eligible for Medicaid

THE TRUTH:

Intentional misrepresentation in a Medicaid application is a crime. Generally, financial information dating back 36 months must be produced with any application for MaineCare benefits, and those records are carefully scrutinized.

MYTH #13

Medicaid rules that applied to my neighbor when he went into a nursing home will also apply to me

THE TRUTH:

Medicaid law and MaineCare rules change, so do not expect that the same law and rules that governed your neighbor's application are still in effect today.

MYTH #14

I can research Medicaid strategies on the Internet

THE TRUTH:

This is only true to a very limited extent. Medicaid is a highly complex benefits program that is primarily funded by the federal government but separately administered by each state. Each state creates its own rules, so the eligibility rules can – and do – vary significantly from one state to another.

MYTH #15

I should transfer my assets now to get Medicaid benefits in the future

THE TRUTH:

Most elder law attorneys discourage their clients from making premature transfers of money and property. While the elder is healthy and living independently, retained assets represent freedom of choice for the elder. And transfers to even the most trusted child expose the transferred assets to problems the child might encounter like lawsuits and divorce. Most important, Medicaid law is constantly changing. A transfer made today may be scrutinized under very different rules in the future, rules that could leave the then-impoorished elder ineligible for government benefits for necessary care.

CAREGIVER PROGRAM

Bangor Adult Education and Kindred Healthcare are presenting a series of 4 classes for caregivers of those with conditions involving memory loss or dementia. You are a caregiver if you manage appointments and finances, plan and prepare meals, or assist with the personal care of a spouse, parent, family member or friend. Call Bangor Adult Ed at 941-6310 to register.

Memory Loss:

What Causes It and What to Do About It?

Monday, March 15, 2004, 6:00 to 7:30 p.m.

- Dr. Henry Atkins, Certified in Geriatrics
Independent Medical Associates

Spending Quality Time with Someone with Memory Loss and How to Approach Challenges

Wednesday, March 24, 2004, 6:00 to 8:00 p.m.

- Kristie Miner, MS, CCC-SLP
Speech Language Pathologist and Reflections Program
Director at Westgate Manor
- Tamera Leland, RN
Assistant Director of Nurses and Assisted Living Program
Director at Westgate Manor

Financial and Legal Planning for the Future

Wednesday, March 31, 2004, 6:00 to 7:00 p.m.

- Jane Skelton, Attorney at Law
Skelton Law Offices, LLC

Services in your Community for People with Memory Problems

Wednesday April 7, 2004, 6:00 to 8:00 p.m.

- Meet and talk with a number of people representing agencies including Eastern Agency on Aging, Bangor Police Department, Elder Independence of Maine, Maine Alzheimer's Association, Senior Companion Program, University of Maine Center on Aging, Maine Adult Day Services Association, and Long-term Care Facilities.

MEDICARE HOSPICE BENEFIT

What is the difference between the Medicare hospice benefit and the regular Medicare benefit? Doesn't Medicare cover all care needs? Why must a patient choose the Medicare hospice benefit?

Hospice care is a team-oriented approach that provides medical care, pain management, and emotional and spiritual support tailored to the needs of terminally ill patients and their loved ones. The hospice benefit is built on the belief that everyone has the right to die pain-free and with dignity.

Core hospice services include nursing and physician services, social services, and counseling services (i.e. bereavement, dietary, spiritual). Non-core hospice services include physical, occupational, and speech therapy, lab tests, home health aides and homemaker services, prescription drugs, medical supplies, and medical appliances like wheelchairs. The test is whether the good or service could improve the patient's quality of life.

In most cases, care is provided in the patient's home. Hospice care is also provided in freestanding hospice facilities, hospitals, and nursing homes and other long-term care facilities.

A person is eligible for Medicare coverage of hospice care if he or she is entitled to Medicare Part A and if an attending physician has certified that the patient's prognosis is for life expectancy of 6 months or less if the terminal illness runs its normal course. However, hospice coverage can certainly extend beyond 6 months. Each Medicare beneficiary is entitled to 2 certification periods of 90 days and then an unlimited number of 60-day re-certification periods.

The focus of hospice is caring, not curing. A patient must elect the Medicare hospice benefit. In doing so, he or she waives Medicare services for treatment of the terminal condition for which hospice care was elected or for a related condition. But the patient may revoke the election for hospice care. Medicare coverage for services previously waived resumes immediately.

SPEAKING ENGAGEMENTS

If you would like Jane Skelton or a member of our staff to speak at an event for your organization, please call Community Outreach Assistant Randi Wright at (207) 947-6500.

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