Long Term Care Supports and Services
Introduction

More people living longer
+
More people living with expensive health needs
+
Complicated and confusing system of benefits

= Financial Crisis, Fear & Exploitation
Key Concepts – Level of Care

• Activities of Daily Living

  • Tool for Measuring Individual’s ability to care for themselves.
  • Includes: bathing, feeding, toileting, transporting, ambulation.
  • Looks at whether they can be performed by the individual, by the individual with assistance, or whether they must be performed for the individual completely by someone other than the individual.
Key Concepts – Level of Care

• Dementia
  • The reason many people need LTC.
  • Not pretty or cute.
  • Alzheimer’s Disease is one (the most common) form.
  • Early diagnosis is critical.
Key Concept – Level of Care

• Caregiver Burnout

  • Hard to overstate the impact.
  • A factor in almost all cases involving dementia.
  • Often combined with guilt and other emotions associated with the decline of a loved one.
Key Concept – Level of Care

• Discharge Planning

• Level of Need Screening Tool- Exhibit B
  • Seven “doors”
  • Two Appeal Processes
Key Concept – Housing Options

- In-Home Care
- Independent Living
- Independent Living w/ Assistance
- Adult Foster Care/ Home for the Aged
- Assisted Living Facility
- Nursing Home
- Continuing Care Community
Key Concept – Housing Options

• Factors:
  • Preferences
  • Level of Need
  • Financial Resources
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<th>Private Funds</th>
<th>Medicare</th>
<th>Medicaid</th>
<th>Long Term Care Insurance</th>
<th>VA Pension</th>
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<td>Yes/PACE</td>
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<td>Yes</td>
<td>Yes for services (but not room and board)</td>
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</table>
Key Concept – Financial Options

• Private funds
  • Accepted in all settings.

• Reverse Mortgage
  • Expensive alternative to traditional mortgages
  • Sold to seniors in high-pressure sales
  • Require sale of home when no longer occupied.
Key Concept – Financial Options

• Private Insurance
  • Supplemental or Medigap policies do no cover LTC except to the limited extent that they may pick up the co-pay for nursing home costs during periods of rehabilitation which are covered by Medicare.

• Long Term Care Insurance
  • Complicated to compare policies
  • Coverage may include nursing home, home care and even assisted living/afc.
Key Concept – Financial Options

- Medicare
  - For people over 65, or under 65 who are “disabled.”
  - Does not cover LTC except for limited (maximum 100 days) of rehabilitation in nursing home.
  - Means-testing entering into Medicare arena?
Medicaid Overview
Medicaid Overview

• Large Government Health Insurance Program.
• Different from Medicare in that Medicaid eligibility requires aged or disabled + strict financial eligibility requirements
• Cooperative federal & state program.
• Federal law provides broad parameters, state provides specific rules and administers eligibility.
Medicaid Overview

- In Michigan, Medicaid implemented by county DHHS (Department of Health and Human Services) Offices.
- Many Medicaid Programs for various populations.
- Medicaid Long Term Support and Services programs:
  - NH Medicaid
  - MI Choice Waiver
  - PACE
DHHS MANUALS

• Located online at: www.mfia.state.mi.us/olmweb/ex/html
• www.michigan.gov/dhhs

• BEM = Bridges Eligibility Manual
• BAM = Bridges Administrative Manual
• BRG = Bridges Reference Glossary
Key BEM Items

- BEM 105 MI Choice Waiver
- BEM 164: Income limit for MI Choice /PACE
- BEM 167: PACE
- BEM 400: Assets
- BEM 401: Trusts and Annuities
- BEM 402: Protected Spousal Amount
- BEM 405: Divestment
Medical Eligibility

• Must establish medical need by meeting one of seven tests in level of need screening tool.
Income Eligibility
Income Eligibility

• In Nursing Home
  • Met provided income does not exceed medical expenses, including NH care costs.
  • Rarely an issue.

• For MI Choice Waiver & PACE
  • Arbitrary income cap for MI Choice applicants of $2,382 per month with no ability to “spend down.” [3 x SSI]
Asset Eligibility
Asset Eligibility

• $2,000 or less of “countable assets.”

• Met at least one day in month being tested.

• “Countable Assets” = everything a person owns, except “excluded” assets.
Asset Eligibility

- Assets come in two flavors: countable and excluded.
Excluded Assets

• Homestead
  • Home occupied by community spouse, or formerly occupied by NH resident.
  • Includes all “contiguous” land.
  • Does not need to be in Michigan
  • Not held in Trust
Excluded Assets

- Homestead
  - For a single person: Less than $623,000 in equity value, but no value cap if occupied by blind or disabled child, or child under age of 21
  - Includes all “contiguous” land.
  - For married person, no value cap if occupied by a community spouse.
Exemption of Homestead

• The residence that a person owns (or is buying) where they usually live. The homestead includes all adjoining property, and any other buildings on the property, but does not include other residences on the property. (BPG Pg 22)
Absence from the Homestead. The homestead exclusion is now limited to the homestead “that an owner lived in prior to the time the individual left the property”. Prior policy only required that an owner have “formerly lived” in a homestead.
Excluded Assets

- Funeral Arrangements
- Vehicle
- Personal belongings & household items
- Small amount of life insurance
- Some business and employment assets
- Pets and Livestock you intend to eat
Burial and Funerals

• Burial Fund Exclusion $1500
• Burial Space & Items BEM 400 page 29
• Funeral Contracts
  • Guaranteed Price Contracts
  • Non-Guaranteed Price Contract
  • Revocable Contract
  • DHS 8A
• Exhibit D- Memo How to buy a Funeral
Life Insurance

• Exempt up to $1,500 in face value life insurance if all policies combined by a single owner for each insured do not exceed $1,500.

• Example #1: Client owns two policies
  • #1 FV = 500; CSV = 3,000
  • #2 FV = 1000; CSV = 3,000

  Both policies are exempt because the total face does not exceed 1,500.
Life Insurance Continued

• Example #2 Client owns 2 policies
  • Policy #1 FV = 1000; CSV = 3000
  • Policy #2 FV = 1000; CSV = 3000
    Both policies are countable

Cash out policy #1 prior to application and now policy #2 is exempt.
Valuing Countable Assets

• Joint Assets
  • Joint with spouse = all counts
  • Joint with non-spouse
    • For bank accounts = all counts unless demonstrate contribution.
    • Real estate, stocks and mutual funds = valued in proportion to ownership.
Valuing Countable Assets

• The value of the person’s share is counted unless the co-owner lives in the property and the co-owners would have to move if the property was sold and there is no other readily available housing.

• Real Estate May be unsalable and have $0 if
  • Listed for at least 90 days and no “reasonable” offer received
  • Attempt to sell must continue until asset is sold

• Other assets may be unsalable and have $0 if
  • Two knowledgeable experts indicate there is no marketable value
Valuing Countable Assets

• **Retirement Funds and Annuities**
  
  • If the owner can make a withdraw, the value is the amount that can be withdrawn, reduced by any withdrawal penalty but not reduced for taxes owing.
  
  • Annuity in pay status or pension that pays monthly benefit with no right of withdrawal, is income.
Valuing Countable Assets

- **Trusts**
  - Revocable Trusts established by applicant or spouse = 100% available.
  - Irrevocable Trust established by applicant or spouse = available to the maximum extent distributions can be made to applicant or spouse.
    - Unless they are exception A or B trusts
  - If created by third party for benefit of applicant or spouse, available to extent applicant or spouse and enforce demand for distribution.
Special Needs Trusts

- Trusts that allow the property in the trust to be used to pay for supplemental needs of a beneficiary who is receiving SSI and/or Medicaid, but which assets do not count as resources in determining eligibility.

- May be established by third parties (parents, grandparents, etc.).

- May be established with the resources of the Medicaid beneficiary himself/herself, if they are under age 65, and provided the trust meets the requirements of an exception A or B trust.
Spousal Protections
Spousal Protections

• In addition to the assets that a Medicaid applicant can keep and qualify for Medicaid assistance, if the applicant is married, their spouse can keep additional assets, called the “protected spousal amount.”
Spousal Protections

- When a Medicaid applicant has a “community spouse,” significant additional documentation is necessary. This is because the applicant must not only file a Medicaid application to establish Medicaid eligibility, but they must also file an asset declaration so that the DHS can calculate the protected spousal amount.
Spousal Protections

• The protected spousal amount is calculated by taking the amount of “countable assets” owned by the couple on the “snapshot date” and dividing in half.
  • The minimum protected spousal amount is: $26,076
  • The maximum protected spousal amount is $130,380
• Unless a higher amount is established by court order.
Spousal Protections

• The snapshot date is the first day of LTC for the applicant.
• Usually this will be the date the applicant entered the NH or entered the hospital if their NH admission followed a hospital stay.
• However, the snapshot date will be a earlier date if sometime after September 30, 1989, the Medicaid applicant was in LTC (hospital and/or NH and/or MI Choice and/or PACE) for a period of 30 days or more.
Spousal Protections

• Examples

  • H & W have $30,000 on snapshot date. PSA is $26,076.
  • H & W have $140,000 on snapshot date. PSA is $70,000.
  • H & W have $300,000 on snapshot date. PSA is $130,380.
Protected Spousal Amount

• When both husband and wife are in LTC, there is no “community spouse” and each are treated as individuals.

• It is a common misunderstanding the rules require the NH spouse’s share to be “spent down” on his or her needs.
Divestment
Divestment

• Frequently misunderstood area of Medicaid.

• Means:
  • (1) Giving assets away
  • (2) Selling assets for less than full value
  • During applicable “look-back period”
  • or Purchasing or modifying a non-confirming annuity

• Divestment penalties only apply to NH Medicaid, Mi Choice Waiver, Adult Home Health and PACE.
Divestment

- Does not mean:
  - Paying off debt
  - Improving homestead
  - Buying furniture, personal belongings or other excluded assets

- Does not include transfers, if it can be shown:
  - Done at a time when need for LTC was not anticipated; and
  - Done solely for a purpose other than qualifying for Medicaid.
Divestment

• The Infamous “Look-Back Period”
• Period during which transfers are disclosed and reported for possible treatment as divestment.
• For 5 Years
Divestment

• Divestment Penalties

• The penalty for divestment is a period of ineligibility.

• To calculate the period of ineligibility, combine the value of all divestments during the look-back period and divide by applicable divestment divisor. For 2021 the divisor is $9,560

• Result is the number of months of ineligibility.

• Penalty period begins to run when applicant is eligible for Medicaid, but for divestment penalty.
Divestment

- Example
  - Mr. Jones enters Medicaid NH with $15,000 remaining assets in November.
  - Spends $13,500 for care in November and December, so that he has $1,500 left in January.
  - Files Medicaid application in January.
  - Total divestments during look-back = $25,000.
  - $25,000 ÷ $9,560 = 2 months and 20 days of ineligibility.
  - Will be eligible for Medicaid January 1, but LTC benefits will not be covered until March 20th.
Divestment

• Gifts to charities and family members.
• By combining all gifts made during the penalty period, regular gifts to churches, mosques and synagogues, along with regular gifts to family members for birthdays and holidays, pose significant periods of ineligibility unless it can be established that they were made for another purpose and without anticipation of needing LTC.
Divestment

• Annuity Divestment Rules
  • The purchase or modification of an annuity is a divestment unless:
    • Irrevocable and issued by commercial insurance company.
    • Equal monthly payments to annuitant made within life expectancy. (No balloon annuities)
    • State is primary remainder beneficiary up to value of Medicaid services provided, unless there is a spouse or minor or disabled child, in which case the state is secondary beneficiary.
Divestment

• Exceptions to the Divestment Rules
  • Transfers to a spouse
  • Transfers to a blind or disabled child
  • Transfers to a trust solely for the benefit of a disabled person
  • Transfer of a homestead to a caregiver child.
Divestment

• Special Rules about Transfers of Excluded Assets
  • Transfer of the homestead and the vehicle are divestment
  • Transfer of other excluded assets may be divestment.
Divestment

• Seeking an Undue Hardship exception
  • Establishing undue hardship requires a doctor (M.D. or D.O.) to verify:
    • Necessary medical care is not being provided; and
    • The person needs treatment for a medical or psychiatric emergency.
  • A Nursing Home may apply for undue hardship on behalf of resident.
Caregiving and Divestment

- BEM 405 page 6
- Relatives who provide care are presumed to do so for love and affection
- Compensation to relatives for care shall be treated as divestment unless a contract exists and meets several specific requirements
Caregiver Contract

• Contract exist prior to performance and payment of services
• Signatures notarized
• Client not in a NH, AFC or on Waiver
• Contract must include type, duration and frequency of the service
• If the contract is signed by an agent the agent must not be the provider.
• Physician must certify in writing all services were required to prevent the transfer of a client to a residential care or nursing facility.
Payments to Caregivers
Jensen v DHS

• See Alert on case that imposes divestment penalty on non-family member caregivers. (Exhibit E)

• Appears to extend same rule to professional caregivers, in or out of institutional care. BEM 405
Divestment

• Divestment does now apply to PACE
Patient- Pay Amount
Patient Pay Amount

• Once eligible for Medicaid, a single applicant pays some portion of his/her income to the NH as his/her “patient pay amount.”

• The patient pay amount for a single person is calculated as total income minus:
  • $60 per month personal needs allowance.
  • Health insurance premiums
  • $83 per month guardian/conservator fee.
Patient Pay Amount

• Example
  • NH spouse has SS benefit of $1,200 per month and pension of $700 per month.
  • Community spouse has SS benefit of $600 per month and no pension.
  • Community spouse has right to minimum monthly income of $2,155.00
  • NH diverts $1,555.00 to community spouse, which is deducted from income of NH spouse when calculating his/her patient pay amount.
Patient Pay Amount
Pre-Eligibility Medical Expense (PEME) Offset

Federal guidelines provide for the patient pay amount to be reduced by outstanding Medical bills.

- BEM 546- Long Term Care facilities may deduct the following from a person patient-pay amount
  - The cost of certain medically necessary services not covered by MA
  - The MA co-payments for covered services
PEME Continued

• Medical Expense incurred in the 3 Months prior to application for Medicaid
• Can not be from a month where Medicaid eligibility existed
• Can not be from a month in which a divestment penalty has been imposed
• Must be reported prior to the first Medicaid redetermination following initial eligibility
Home Maintenance Patient Pay Amount Offset

• LTC residents may divert income for maintenance for their home for up to 6 months. When the following apply BEM 546
  • Medicaid director has approved the exception
  • Physician had certified the individual is likely to return home within 6 months
  • Request is being made for individual who is currently Medicaid eligible and residing in a nursing facility
Home Maintenance Patient Pay Continues

• The home is not occupied by a community spouse
• Resident has legal obligation to pay housing expenses
• The request is being made by the individual or an individual with authorized to act on behalf of the individual
Estate Recovery

• The ability of the State to make a claim against the property of a Medicaid Beneficiary after they die to recover the costs paid by Medicaid during their life.
Estate Recovery

• Only applies to:
  • Persons on Medicaid in Nursing Homes or receiving care through long term care programs including:
    • MI Choice Waiver Services
    • Home Help
    • Home Health
    • PACE
  • Over the age of 55
Estate Recovery

• Long and Tortured History
  • 1993 Federal Government Mandates
  • 2007 Michigan passes enabling legislation
  • May 2011 CMS approved Amendment to the State Medicaid Plan effective date of July 2010
  • July 2011 First notice of intent to file a claim

• Michigan is the last state in the Union to do so.
Estate Recovery

• Normally talking about the house, as that is typically the only asset of significant value owned by a Medicaid beneficiary
Estate Recovery

• Every state is different.
• 2007 Michigan law provides favorable exceptions:
  • Only applies to “probate assets”
  • Exclude 50% of average value of home in the county.
  • Spouse or disabled child residing in home delays implementation.
  • Caregiver relative residing in home delays implementation.
Estate Recovery

New Case Decision June 2017
No Hardship Exemptions
What We Do

• Avoid probate by using ladybird deeds and other non-probate arrangements.
• Transfer homes to disabled or caregiver children where possible.
• Where no estate, provide minimal information and return questionnaire with death certificate and cover letter.
• Where there is an estate, complete questionnaire with nominal information (sign it? not required).
• Disallow the claim when filed.
Medicaid Planning

• Advising Clients about Medicaid eligibility rules, especially in the context of nursing home Medicaid and MI Choice Waiver Program.

• Advising clients how to “spend down” assets to become eligible for Medicaid, while preserving those assets for spouse or other beneficiaries.
Threshold Issues

• Who is your client?

• On what authority are you acting?
Converting Countable Assets to Exempt Assets

- Paying off Debt
- Purchasing funeral services
- Purchasing a car
- Buy Duplicate hearing aids, dentures and glasses
- Improving the homestead
  - Furnishings
  - Structural improvements
Converting Countable Assets to Exempt Assets - Example

• Client has $24,000 of countable assets and entered the NH that month.
• Prepaid funeral for $7,000.
• Trade in car and spend additional $12,000 on replacement vehicle
• Spend $3,500 on home repairs
Elevating the PSA before the Snapshot Date

• In situations where:
  • Married couple
  • Meet before snapshot
  • Countable Assets less than twice maximum PSA ($260,760)

• Can be accomplished with “house in and out” using revocable trust.
Elevating the PSA before the Snapshot Date - Example

• Married client has $70,000 of countable assets and a home worth $100,000. Current PSA is $35,000.
• Expects to enter NH next month.
• Create single revocable trust for community spouse.
• Deed house into revocable trust, thereby increasing countable assets to $170,000 on snapshot date. Result = $85,000 protected spousal amount.
• After entering NH, deed house out of trust to community spouse, making it exempt and reducing countable assets to $70,000.
Elevate PSA and/or CSIA by Court Order

• BEMs allow for Court Order to provide for protected spousal amount above what formula would provide (no limit).

• BEMs also allow for Court to establish amount of income diverted to needs of community spouse.
Annuitize Assets

• Convert cash and other liquid assets to a stream of income payable to the community spouse.
• Terms of annuity or note must comply with life expectancy tables, and other BEM requirements.
• Must name state as remainder beneficiary.
• Provides for immediate eligibility.
• Not helpful when assets at issue are something other than cash or investments.
Solely For Benefit Trust

- Once the favored tool for protecting assets in married couple situations, became no longer available in August 2014, when DHS changed their interpretation of the policy.
- Michigan Supreme Court’s Hegadorn decision in 2019 means that the trust may be back as a planning option, but planners should proceed with caution if using this tool.
Planning with Persons with Disabilities

• Two exceptions to the divestment rules involving persons with disabilities.
  • Transferring assets to a blind or disable child of the applicant, regardless of the age of that child, is not divestment.
  • Transferring assets to a trust SBO of a disabled person (not necessarily a child or even relative of the applicant), is not a divestment.
Lump Sum Divestment

• There are 2 ways to divest assets
  • 1. Divest and wait out the 5 year look back
    • May or may not be in nursing home at time of divestment
  • 2. Divest ½ of the assets and use the remainder to pay the penalty period
    • Must be in nursing home to trigger penalty
Half-a-Loaf Divestment

- Plan to transfer approximately half the assets, and use remaining half to pay for care during intervening penalty period.
- Many possible structures:
  - Short term commercial annuity
  - Private actuarially sound note
  - Informal repayment understanding
  - Liquidation of exempt asset
Recognize the increased level of speculation and risk this type of advanced planning involves.

• Will the level of need materialize?
• Will there be better private pay options?
• Will the same Medicaid benefits be available?
• Tax consequences.
• Etc. etc., etc.