

MEDICAID & VA UPDATE:

What You Should Know to Assist Your Clients

Presented by:

Allison M. McMeechan, Esq.

amcmeechan@reminger.com

216-430-2105



About Allison

Allison is a shareholder with Reminger Co., LPA, and chair of the firm's elder and special needs law practice group. Allison has published articles and has spoken in the areas of guardianships and probate, estate and special needs planning, and government benefits. Her audiences include individuals, bar associations, non-profit organizations, and other professional organizations. Allison is a Certified Elder Law Attorney through the National Elder Law Foundation (CELA) and a Certified Elder Law Specialist through the Ohio State Bar Association. She is a member of numerous boards and organizations, including the National Academy of Elder Law Attorneys National and Ohio Chapters, and the Ohio State Bar Association's Elder & Special Needs Law Committee. Allison is also a member of the Advancement Committee for Julie Billiart Schools, and former member of the Board of Directors of Milestones Autism Resources.

Overview of Benefit Programs

- Social Security Administration
 - Supplemental Security Income (SSI)
 - Social Security Disability Insurance (SSDI)
- Medicaid
- Medicare

Social Security Disability Insurance (SSDI)

- Entitlement for “insured” workers
- Must have earned sufficient quarters under Social Security
- Benefit for adult disabled children, disabled before the age of 22
- Must meet the definition of disability:
 - Inability to engage in substantial gainful activity by reason of medically determinable physical or mental impairment
 - Disabling condition has lasted or is expected to last 12 months or result in death

Supplemental Security Income (SSI)

- Means-tested (income and resource limits)
- 2025 benefit rate:
 - \$967.00 for individuals
 - \$1,450.00 for couples
- Eligible groups:
 - Age 65 or older
 - Blind adults and children
 - Disabled adults and children

SSI: Resources

- \$2,000.00 individual / \$3,000.00 couple
- Excluded resources:
 - Home;
 - Car;
 - Life insurance with face value of \$1,500.00 or less;
 - Property used in a trade or business essential to self-support;
 - Burial plots; and,
 - Personal effects

Medicare

- Entitlement for those who paid into Medicare:
 - Over age 65
 - Disabled for 24 months
 - End-stage renal disease
- Not dependent on income or resources
- Medicare DOES NOT cover long term care
- Medicare will cover skilled care for a period not to exceed 100 days per benefit period (Part A)

Medicaid for Long Term Care

What Does it Pay For?

- PASSPORT – age 60 or older; provides in-home services
- Ohio Home Care Waiver – under age 60; provides in-home services
- Assisted Living Waiver – aged 21 or older; provides care in an assisted living facility
- Nursing Home
- MAGI Medicaid for low-income individuals under the age of 60

Medicaid: Individual Applicant

- \$2,000.00 resource threshold
- \$2,901.00 income limit (2025)
- Exemptions include:
 - Residence (provided equity is under \$730,000.00)
 - One Automobile
 - Household goods and personal effects
 - Term life insurance
 - Whole life insurance with a face value of \$1,500.00 or less
 - Funeral and burial contracts
 - Property used in trade or business
 - Retirement accounts in payout mode considered income not a resource

Medicaid: Income Eligibility

- Individual may be ineligible for Medicaid if her gross income is too high
- Total of all income must be less than \$2,901 (2025)
- If the income is over the special income level, the individual must establish a Qualified Income Trust
- Once the QIT is established, the individual must transfer her income over the SIL to the QIT each month

Medicaid: Community Spouse Monthly Income Allowance

- Income is attributed to the spouse who receives it
- IS must have income below the Special Income Level
- CS can have income of any amount
- The spouse remaining in the home (the Community Spouse” or “CS”) is entitled to a minimum amount of income each month to meet his or her needs while the spouse is in the nursing home (the Institutionalized Spouse or “IS”)
- Known as the Minimum Monthly Maintenance Needs Allowance (“MMMNA”)

Medicaid: 2025 Monthly Income Allowance Numbers

- MMMNA for CS: \$2,644.00
- Standard Utility Allowance: \$746.00
- Excess Shelter Allowance: \$793.00
- MMMNA Cap for CS: \$3,948.00

Medicaid: Sample MIA Calculation

- Harry (IS) and Sally (CS)
- Harry's income is \$3,000.00 per month; Sally's income is \$1,000.00 per month
- Real estate taxes and insurance: \$350.00 per month
- No mortgage
- Harry must establish QIT
- \$2,644.00 (MMMNA)
 - + \$350.00 (taxes + insurance)
 - + \$746.00 (utility allowance)
 - \$793.00 (ESA)
 - = \$2,947.00
- Sally's income allowance is \$2,947.00 (less Sally's income of \$1,000.00)
- Sally will keep \$1,947.00 from Harry's income plus her own.

Medicaid: Patient Liability

- Add all of Harry's income
 - Subtract the personal needs allowance of \$50.00
 - Subtract Sally's MIA
 - Subtract health ins. premiums
 - Balance is paid to NH as patient liability/share of cost
- \$3,000.00
 - \$50.00
 - \$1,947.00 to Sally
 - \$300.00 health ins premium
 - = \$703.00
 - PL of \$703.00 is paid to NH each month
 - Harry should transfer \$703.00 to QIT each month and pay the full amount to the NH

Medicaid: Spousal Resources

- CS can retain $\frac{1}{2}$ of the countable resources as of the first continuous date of institutionalization for 30 days (“Snapshot Date”)
- Assets of both spouses are counted on the Snapshot Date
- Minimum: \$31,584.00 / Maximum: \$157,920.00 (2025)
- Same exemptions apply to spouses as individuals
- IS can retain \$2,000.00

Medicaid: CSRA Calculation

- Harry enters nursing home on 10/1 and does not return home
- 10/1 is snapshot date
- Harry and Sally own:
 - Their home, valued at \$200,000
 - 1 car
 - \$300,000 in Sally's IRA – currently paying RMDs
 - \$100,000 in Harry's IRA – currently paying RMDs
 - \$200,000 in joint brokerage account
 - \$20,000 in joint bank accounts
- Sally will retain
 - Their home
 - Their car
 - Her IRA
 - \$110,000 (1/2 of \$220,000)
- Harry will retain
 - His IRA; however, RMDs will be included in his patient liability
 - \$2,000

Medicaid: Sally's Spenddown

- Sally can spend down \$108,000.00 on the following:
 - Repairs and improvements to her home
 - Pay off debt
 - Trade in her current car and pay cash for a new car
 - Prepay for funeral and burial expenses
 - Prepay real estate taxes, insurance and utilities
 - Medicaid-compliant immediate payment annuity

Medicaid: Improper Transfer

- Any transfer on or after the lookback date
 - For less than fair market value; and
 - The purpose is to qualify for Medicaid or avoid utilizing resources for medical needs or other living expenses
- Restricted coverage begins when the applicant is *otherwise eligible*

Medicaid: Look Back Period

- Look-Back Period is 5 years (for individuals and trusts).
- The Average Private Pay Rate (APPR) is the average cost of nursing home care as determined by the State of Ohio.
- The APPR is used to determine the restricted Medicaid coverage period for improper transfers.
- The APPR is \$7,787.00 for 2025.

Medicaid: Restricted Coverage

- Calculated by dividing the gift by the APPR
- Resulting figure is the amount of time the State will not pay for LTC services
- Begins when the individual is in the NH and spent down to applicable resource limit.

Medicaid: Restricted Coverage Calculation

- In 2021, Harry and Sally gifted \$100,000.00 to their children
- Harry entered the NH on 10/1/2024 and applies for Medicaid (without the advice of counsel)
- JFS will divide the \$100,000.00 by \$7,787.00
- 12.8 month restricted coverage (12 whole months + 0.80 partial months).
- State of Ohio will not pay for LTC services for Harry for 12.80 months
- Sally will pay private pay rate (not APPR) for 12.80 months

Medicaid: Exceptions to Improper Transfer Rules

- The Home may be transferred to:
 - The spouse
 - A child under 21 or blind or disabled child
 - Caregiver child
 - Sibling with an equity interest in the home who resided there for at least 1 year

Medicaid: Exceptions to Improper Transfer Rules

- Assets other than the home may be transferred to:
 - The spouse or to another for the sole benefit of the spouse
 - A blind or disabled child or a trust for the **sole benefit** of the child

(Sole benefit means that the funds will be expended over the life expectancy of the individual)

 - A trust for the sole benefit of an individual under the age of 65 who is disabled

Medicaid: Gifting to a Child vs Gifting to a Trust

- The look-back period is the same
- Irrevocable Trust can provide a structure for the disposition of the asset
- Irrevocable Trust can protect from a child's creditors, divorce, or death
- Potential for stepped-up basis at settlor's death
- Irrevocable Trust may permit distributions to the trustee and/or beneficiaries
- Income may be distributed to settlor; however, income would be counted in PL

Medicaid: Annuities for CS

- CS may purchase an annuity with resources in excess of CSRA
- Not an improper transfer if purchased prior to application
- State of Ohio must be named as the remainder beneficiary
- Annuity converts countable resources to income for CS
- Must be irrevocable, non-assignable and actuarially sound
- Payout must be for a period less than the CS life expectancy
- CS can retain all income from the annuity

Medicaid: Annuities for IS

- IS may purchase an annuity prior to application
- Annuity converts countable resources to income for IS
- Same rules as the annuity purchased for the CS
- Usually used in conjunction with a gift made within 5 years

Medicaid: Transfers Less than 5 Years Before Application with Annuity Purchase

- Harry is single. Assets are home (\$200,000) and brokerage (\$200,000)
- Cost of care is \$10,600.00; income is \$3,000.00
- Harry transfers his home and \$5,000 to an irrevocable trust causing a 26.3-month restricted coverage period
- Harry purchases an immediate payment annuity for 26 months with \$195,000.00.
- Annuity payout is \$7,500.00 per month for 26 months
- Harry applies for Medicaid; income and annuity cover cost of care for 26 months
- Harry is eligible for Medicaid in 26 months and gift is protected

Medicaid: Retirement Accounts

- Retirement accounts in payout mode are a source of unearned income
- Owner must receive regular, period payments (RMDs)
- Retirement accounts not in payout mode may be a countable resource if the owner can convert the account to cash
- If a CS is working and cannot withdraw the retirement account, it is not a countable resource

Medicaid: Special Needs Trusts

- A type of trust established for a beneficiary with a disability that, when properly drafted and administered, is not counted as a resource or as income when determining government benefit eligibility.
- Medicaid Payback
 - Required if the trust is “self-settled” by the beneficiary; in other words, it is funded with assets owned by the beneficiary or available to the beneficiary
 - Not required if the trust is established by a third-party who directs assets to the trust and not through the beneficiary, i.e., a wholly discretionary trust

Medicaid: ABLE Accounts

- 26 USC 529A; POMS SI 01130.740; R.C. 113.50 - 113.56; Public Law 113–295 (12/19/14)
- Investment accounts (not bank accounts) with 5 different investment options
- Governed by the IRS
- Called “STABLE Accounts” in Ohio and managed by Ohio Treasurer
- Every state has the ability to create their own ABLE Account similar to a 529; many states use Ohio’s plan
 - Ohio’s plan is open to any US resident, not just Ohio residents

ABLE Accounts, Continued

- “Qualified Individual” (QI) Eligibility
 - Disability began before age 26 and the disability will last for at least 1 year
 - Age increasing to 46 on January 1, 2026
 - Receives SSI or SSDI, has a disability on SSA’s list of compassionate allowance conditions, or will self-certify the disability
- Established by
 - Competent QI
 - Agent under power of attorney if sufficient authority in document
 - Practice Tip: Consider including authority to establish and fund in your POA
 - Parent
 - Legal Guardian

ABLE Accounts, Continued

- Annual contributions limited to \$19,000 from all sources
 - If the Qualified Individual is working, an additional \$15,560 can be deposited each year
- Lifetime maximum value is \$596,925 (figure changes) although only \$100,000 is exempt if QI is an SSI recipient
- May be used for Qualified Disability Expenses including shelter, housing, transportation, and medical
- Trusts are generally permitted to contribute to STABLE Accounts
- Medicaid payback at death of QI; remainder must be probated

Veteran's Administration Programs for LTC

- Pension
- State Funded Homes
- Home Based Primary Care
- Adult Day Health Care
- Home Health Aides
- Hospice and Palliative Care
- Funeral and Burial Benefits

VA Pension: Eligibility

- Service Requirement
 - 90 days of active duty
 - One day during war-time period
- Aged (65 or older) or disabled
- Meet asset and income test

VA Survivor's Pension: Eligibility

- Deceased Veteran must meet requirement
- Married to the Veteran at the time of death
- May not be remarried
- Meet asset and income test

VA Pension: Eligible Wartime Periods

- **World War II** (December 7, 1941 - December 31, 1946)
- **Korean conflict** (June 27, 1950 - January 31, 1955)
- **Vietnam era – in Vietnam** (February 29, 1961- May 7, 1975)
- **Vietnam era – all others** (August 5, 1964 - May 7, 1975)
- **Gulf War** (August 2, 1990 - date not yet determined)

VA Pension: Net Worth

- Net worth limit is \$159,240 (2025), whether single or married
- Net worth includes annual income (after deductions)
- Excluded assets:
 - Home
 - Car
 - Personal goods and household effects
- Single Veteran with \$100,000.00 assets, \$12,000 annual income, and a home is eligible based on net worth. But must then look at income.

VA Pension: Lookback Period

- Lookback period is 3 years
- Maximum penalty period is 5 years
- Penalty period is calculated by dividing the amount of the gift by \$2,795
- Penalty period begins to run the month after the gift is made
- Exception for fraud and transfer to a trust for the benefit of a child who is incapable of self-support

VA Pension: Income

- Includes income from all sources, including eligible dependents
- May use medical expenses to reduce countable income
- Annual household income must be less than the VA pension benefit
- Pension available for surviving spouses

VA Pension: 2025 Maximum Annual Pension Rate

- Base pension, single, \$16,965
- Base pension, married, \$22,216
- Housebound, single, \$20,732
- Housebound, married, \$25,982
- Aid and Attendance, single, \$28,300
- Aid and Attendance, married, \$33,548

VA Pension: Annual Income Calculation Examples

- Harry is a married veteran who qualifies for A&A
 - MAPR: \$33,548
 - Harry and Sally combined income is \$48,000
 - Harry's homecare totals \$60,000
 - Harry can deduct homecare costs above 5% of MAPR (\$1,677)
 - Income for VA purposes: -\$10,323
 - Harry will receive full \$33,548
- Harry is a single veteran who qualifies for A&A
 - MAPR: \$28,300
 - Harry's income is \$14,000
 - Harry's medical expenses are \$6,000
 - Harry can deduct medical expenses above \$1,415
 - Income for VA purposes: \$9,415
 - Harry will receive \$18,885

VA Pension: Calculation of Penalty Period

- Harry is a single veteran who requires A&A
- Harry gifts \$100,000 to his children in September 2020
- Harry's remaining assets total \$130,000 plus his car and \$12,000 annual income
- Harry's penalty period is $\$100,000 / \$2,795 = 35$ months beginning October 2020
- Harry is eligible for the VA pension beginning September 2023
- Harry applies in January 2025 and is eligible

VA Pension: Calculation of Penalty Period

- Harry is a married veteran who requires A&A
- Harry and Sally gift \$10,000 to their children in January 2025
- Harry and Sally have remaining assets totaling \$90,000 plus their house and car
- Harry and Sally's combined income is \$20,000
- Harry and Sally apply for VA pension in January 2025
- No penalty period because the amount of the gift, combined with their net worth, is under \$159,240

THANK YOU!

