

# MEDICAID PLANNING BASICS

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PRESENTED BY:

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# AGENDA

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- ◆ Initial Considerations
- ◆ Overview of Medicaid Eligibility Rules
- ◆ Medicaid Treatment of Trusts
- ◆ Planning Strategies

# INITIAL CONSIDERATIONS

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- ◆ Long-Term Care Medicaid
  - ◆ Skilled nursing homes:  
<https://ltc.dph.illinois.gov/webapp/LTCApp/ltc.jsp>; FOIA request to Illinois Department of Public Health
  - ◆ Supportive living facilities (waivered program)
- ◆ Facility contract
  - ◆ Notification requirements
  - ◆ Private pay obligations
- ◆ Retroactive coverage
  - ◆ 3 months
  - ◆ Eligibility determination as of each month

# INITIAL CONSIDERATIONS AND MEDICAID

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- ◆ Waivered Programs – State of Illinois received special approval from the Federal government to deviate from standard Medicaid funded services as an alternative to nursing home placement.
  - ◆ Community Care Program (over 60)
  - ◆ In-Home Services (under 60)
- ◆ Affordable Care Act Medicaid
- ◆ “Community” Medicaid

# MEDICAID ELIGIBILITY

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- ◆ Residency and Citizenship
- ◆ Need
  - ◆ Assets
  - ◆ Income

# RESIDENCY

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- ◆ Only residents of Illinois are eligible for Illinois Medicaid.
  - ◆ Voluntarily living in Illinois
  - ◆ No durational requirement
  - ◆ Intention to remain in Illinois
  - ◆ If an individual maintains a home in another state, Illinois residency may not be established

# CITIZENSHIP

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- ◆ Only U.S. Citizens or lawful aliens are eligible for Medicaid.
  - ◆ Lawfully admitted for permanent residency; or
  - ◆ Permanently residing in the United States under color of law
  - ◆ Documentation of U.S. Citizenship and identity is required of all applicants except for Medicare, SSI, and RSDI recipients.

# MEDICAID ELIGIBILITY ASSET LIMITATIONS

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- ◆ \$2,000 – limit for a single nursing home applicant
- ◆ \$109,560 – standard allowance for a community spouse
  - ◆ All assets of the institutionalized spouse and community spouse count as available in determining eligibility
- ◆ Includes all assets that are not otherwise considered exempt such as checking and savings accounts, stocks, bonds, savings certificates, and other securities, miscellaneous resources that are not real property



# JOINT ASSETS

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- ◆ Joint accounts and personal property
  - ◆ Presumption is 100% belongs to applicant unless the applicant verifies that they don't have access to the asset, it is a joint income tax refund, or legal interest is less than the total value of the asset
  - ◆ Can overcome the presumption with evidence that the asset is not owned by the applicant
  
- ◆ Joint real estate
  - ◆ Applicant's proportionate share of the equity value of the property is an available asset, unless property is exempt or client verifies that the property is not accessible.

# ANNUITIES, PENSION PLANS, AND OTHER RETIREMENT ACCOUNTS

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- ◆ If these assets can be accessed, they are countable as income or as a resource.
  - ◆ If drawing benefits from the plan, budget the income. The principle is exempt.
  - ◆ If not drawing benefits, but has the ability to access, then the principle is counted as a resource minus any penalty that is incurred from accessing.

# MEDICAID ELIGIBILITY ASSET LIMITATIONS – EXEMPT ASSETS

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- ◆ Motor Vehicles - if necessary for medical transportation, modified for handicap, transferred to community spouse, or worth less than \$4,500
  
- ◆ Life Insurance
  - ◆ Term policy with no cash value
  - ◆ Group policies provided by an employer and/or required for employment
  - ◆ Whole life policy with a total face value of \$1,500 or less
  
- ◆ Burial Spaces
  - ◆ For use by applicant, spouse or any immediate family members
  - ◆ Includes gravesites, crypts, mausoleums, urns, caskets, vaults, plots, niches, etc.
  - ◆ Also includes additions and improvements to burial spaces - headstones, markers, plaques, burial containers and arrangements for opening and closing gravesites

# MEDICAID ELIGIBILITY ASSET LIMITATIONS – EXEMPT ASSETS

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## ◆ Pre-Need Burial Arrangements

- ◆ Up to \$1,500 in a revocable burial fund contract;
- ◆ Funds in an irrevocable prepaid burial contract up to \$6,680 (2020), including both goods and services but not including burial spaces; or
- ◆ A prepaid burial contract funded by an irrevocable assignment of a person's life insurance policy to a trust which includes a statement that upon the death of the person the State will receive all amounts remaining in the trust. Must be acknowledged by insurance company.

# REAL PROPERTY

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- ◆ Homestead property is exempt – property owned and occupied by the person as their home
  
- ◆ Once that person enters a nursing home or supportive living facility, the property remains exempt if they demonstrate the following:
  - ◆ Intention to return to homestead – provide a statement to this effect; subjective standard; Medicaid can still place a lien
  - ◆ Occupied by one of the following:
    - ◆ Person's spouse
    - ◆ Dependent sibling
    - ◆ Person's child under age 21
    - ◆ Person's adult child who is blind or has a disability
    - ◆ Caregiver child who resided with and provided care
  
- ◆ Unless occupied by one of the above, equity limited to \$536,000 as determined by appraisal no more than 6 months old, assessor's current estimate, or other reliable or verifiable indication of fair market value.

# REAL PROPERTY

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- ◆ Non-homestead real property is considered non-exempt unless:
  - ◆ Small fractional interest and would suffer substantial loss on sale of property; or
  - ◆ Listed for sale, will not be counted for six months as long as good faith effort to sell continues. May be extended if Department thinks extension warranted.
  
- ◆ Inaccessible asset

# INCOME ELIGIBILITY

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- ◆ To qualify for Medicaid coverage, the nursing home or supportive living resident's countable monthly income must be less than the nursing home's monthly private pay rate.
- ◆ Income in the community spouse's name is not considered available to the nursing home spouse from the first full month in which the nursing home spouse is institutionalized.
  - ◆ "Name on the instrument" rule
  - ◆ The State may seek Responsible Relative income payments from the spouse



# ALLOWABLE DEDUCTIONS FROM INCOME OF NURSING HOME MEDICAID RECIPIENT

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- ◆ Personal needs allowance (\$30 for people who live in a skilled care center / \$90 for Veterans and people who live in Supportive Living)
- ◆ Community Spouse Income Allowance
- ◆ Family Maintenance Needs Allowance
- ◆ Maintenance for Dependent Children under 21 not residing with community spouse
- ◆ Amounts to cover Medicare and other health insurance premiums
- ◆ Amounts to cover over the counter drugs or other medically necessary items ordered by a physician but not paid for by Medicaid and amounts to cover incurred expenses for medical or remedial care for the institutionalized spouse not paid for by Medicaid limited to those incurred within the 6 months prior to the month of an application if a current liability. Medical expenses incurred during a penalty period not allowable.



# COMMUNITY SPOUSE MAINTENANCE NEEDS ALLOWANCE

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- ◆ The community spouse is able to receive a contribution from the nursing home spouse's income to bring his or her total monthly income up to the amount of a predetermined monthly needs allowance, \$2,739. There are provisions for annual adjustments of this figure like the asset figure that is tied to the consumer price index of the previous year.
- ◆ Community spouse or nursing home spouse may request a fair hearing to establish a greater amount of maintenance allowance. For instance, if regular health care costs exceeding \$2,739 per month can be proven at a fair hearing to increase the needs standard, the allowance from the nursing home spouse's income may be increased.
- ◆ Additionally, if the community spouse has a court order for support or maintenance which, in combination with the community spouse's income, exceeds the \$2,739 standard, IDHS must abide by the court order.

# NONALLOWABLE TRANSFERS

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- ◆ Non-allowable transfers are those made for less than fair market value which are presumed to be made for the purpose of qualifying for Medicaid and do not fall within one of the exceptions.

# TRANSFER OF ASSETS RULES

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- ◆ 60-month “look back”
- ◆ Penalty period calculated for each month in which nonallowable transfer occurred by dividing amount transferred by average cost of nursing home care
- ◆ Penalty period measured in months and partial months/days

# TRANSFER OF ASSETS RULES

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- ◆ Penalty period starts the month that the applicant is receiving a long-term care level of care and is eligible for Medicaid based upon an application but for the application of the penalty period; multiple penalty periods run consecutively.

# ALLOWABLE TRANSFER OF ASSETS

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## ◆ Allowable Transfers of Assets

- ◆ Transfers of exempt homestead property to: a spouse, minor child, disabled adult child, sibling with an equity interest residing in the property, or child who lived with applicant and provided care or support for two years prior to nursing home admission
- ◆ Transfers to or for the benefit of the Community Spouse
- ◆ Transfers to a blind or disabled child of any age or to a trust created solely for the benefit of the disabled child
- ◆ Transfers by a disabled person under age 65 to an OBRA Pay Back Trust or OBRA Pooled Trust Subaccount. Note: transfers by disabled persons over the age of 65 to an OBRA Pay Back Trust or OBRA Pooled Trust Subaccount are penalized transfers.
- ◆ Transfers where it is determined that a denial of eligibility would create an undue hardship
- ◆ Transfers made exclusively for a reason other than to qualify for benefits
- ◆ Transfers to a Community Spouse that were result of a court order
- ◆ Transfers that are returned to the person prior to a determination of eligibility. If returned after eligibility determination, must be returned in full.

# MEDICAID RULES AND PAYMENTS TO CAREGIVERS

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- ◆ Personal Care Contracts must be established prior to the receipt of services
- ◆ Care services provided by friend, family member, or relative:
  - ◆ Presumption that services are gratuitous and without expectation of compensation
  - ◆ Rebut presumption by credible evidence that preexists the delivery of services – contemporaneous receipts, logs or other credible documentation; personal care contract.
  - ◆ Compensation in excess of prevailing rates for similar care or services is a nonallowable transfer.

# MEDICAID TREATMENT OF TRUSTS

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- ◆ Self Settled (or by spouse) Revocable Trusts - commonly known as “Living Trusts”
  - ◆ Count as an asset
- ◆ Self Settled (or by spouse) Irrevocable Trusts
  - ◆ Whatever amounts that the trustee may use for the benefit of the Medicaid applicant is presumed available; it can use any principal, all available
- ◆ Third-Party Trusts
  - ◆ Do not count if “discretionary”; count if can be used for support, health and maintenance
- ◆ OBRA Payback Trusts
  - ◆ Do not count if meet all requirements

# PLANNING OPTIONS

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- ◆ Advanced Planning – Medicaid in the future
- ◆ Crisis Planning – need Medicaid now



# ADVANCED PLANNING

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- ◆ Scenario 1: Family Member Providing Care
  - ◆ Planning for a transfer of Homestead Property to Caretaker Child
    - ◆ Need evidence (physician's statement) to support that the applicant would have otherwise required institutional level of care;
    - ◆ Need evidence to show the child resided with the person; and
    - ◆ Need evidence to show the child provided care that prevented institutionalization, such as affidavits.
  - ◆ Personal Care Contract

# ADVANCED PLANNING

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- ◆ Scenario 2: 5 Year Plan with Irrevocable Medicaid Asset Protection Trust
  - ◆ Trust Terms: anticipated Medicaid applicant is grantor but not beneficiary; cannot be amended by grantor; trustee forbidden from giving the trust assets to the grantor
  - ◆ Assets in the Trust will not be countable for Medicaid purposes, but are deemed a gift and will penalize the applicant's eligibility if within the 5-year lookback.
  - ◆ When is this strategy appropriate?

# CRISIS PLANNING

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- ◆ Under age 65 OBRA trust options
- ◆ Annuity Planning – involves utilizing available assets to purchase an immediate annuity that will provide a monthly income stream
  - ◆ Gifts to Irrevocable Medicaid Asset Protection Trust + Annuity Purchase
  - ◆ Transfers to Pooled Trusts (post age 65) + Annuity Purchase
  - ◆ Remediating Prior Gifts
  - ◆ Community Spouse Situations

# CRISIS PLANNING

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- ◆ Court Orders
  - ◆ Obtain additional assets and/or income for community spouse
  
- ◆ Transfer of Homestead Property
  - ◆ Transfers of exempt homestead property to a spouse, minor child, disabled adult child, sibling with an equity interest residing in the property, or child who lived with applicant and provided care or support for two years prior to nursing home admission.



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# QUESTIONS

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