LONG-TERM CARE MEDICAID PLANNING: POST-ELIGIBILITY ISSUES

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What Follows After Long-Term Care (LTC) Medicaid Application Approval

- LTC Medicaid approval is not the end of the matter
- Important issues remain and cannot be neglected
- If they are, LTC Medicaid eligibility can be lost and reapplication may be necessary
- At a minimum, potential issues need to be monitored

What Follows After Long-Term Care (LTC) Medicaid Application Approval

A. <u>Post-Approval Matters</u>

1. Notification of Eligibility

- Department of Vermont Health Access (DVHA) will notify client applicant.

- Attorney notified only if the client completes an alternate reporter form.

- Still good practice to have the client inform the attorney when the notification of eligibility is received.

- With notification should come calculations of: (i) Community Spouse Resource Allowance (CSRA); (ii) any monthly income allocation to CS; (iii) countable assets to IS; (iv) monthly patient share

What Follows After Long-Term Care (LTC) Medicaid Application Approval

2. Patient Share, Permitted Allowances and Monthly Income

- Usually all but the personal needs allowance (PNA) (in VT for an individual recipient, $72.66 in 2020) is paid out from monthly income
- What must be promptly paid:

   i. Patient share

   ii. Any permitted allocations to CS or other family members

   iii. Health insurance premiums or payments on outstanding medical bills not covered by LTC Medicaid

   iv. Any home upkeep deduction

   v. Any other allowed offsets to patient share

What Follows After Long-Term Care (LTC) Medicaid Application Approval

2. Patient Share, Permitted Allowances and Monthly Income (cont.)

- One important reason for paying income out promptly <u>during the calendar month of receipt</u>: Income remains income only during that calendar month; it becomes a countable resource if held beyond the calendar month of receipt.

What Follows After Long-Term Care (LTC) Medicaid Application Approval

2. Patient Share, Permitted Allowances and Monthly Income (cont.)

- A LTC Medicaid recipient can lose eligibility if retention of too much income beyond the calendar month of receipt causes the recipient's countable resources to exceed the $2,000 limit for an individual.
- No requirement to spend the PNA but it may be necessary to keep countable resources within the limit.

What Follows After Long-Term Care (LTC) Medicaid Application Approval

3. Annual Review of LTC Medicaid Eligibility

- By each yearly anniversary of the initial determination of eligibility, DVHA will conduct a review to ensure eligibility is maintained.
- During an annual review, the LTC Medicaid recipient's countable and excluded assets will be verified.

What Follows After Long-Term Care (LTC) Medicaid Application Approval

3. Annual Review of LTC Medicaid Eligibility (cont.)

- Where there is no CS, asset review could include verifying through municipal assessment that the value of an owned primary residence is within the significant equity limit ($595,000 in VT in 2020).

- For a CS – all countable assets which are part of the CSRA must be retitled in the CS' name by the 1st anniversary of the eligibility determination, after which there can be no more spousal transfers

What Follows After Long-Term Care (LTC) Medicaid Application Approval

4. Unreported Income and Assets

- An applicant must tell the truth about income and assets on the LTC Medicaid Application; to knowingly tell a falsehood is perjury
- It can happen, however, that an applicant makes a mistake or not all income or assets are known at the time of the initial application.

What Follows After Long-Term Care (LTC) Medicaid Application Approval

4. Unreported Income and Assets (cont.)

- Example – an interest-bearing checking account is listed and verified as an asset but pays interest at intervals and the bank reports this to the IRS on a 1099-INT, which is reported to DVHA and can generate an unreported income notice.

- These situations can be resolved but until DVHA has the full details they can assume a failure to disclose

What Follows After Long-Term Care (LTC) Medicaid Application Approval

5. Notification of Change in Circumstances

- Any significant change in circumstances, including discovery and disposition of previously unknown assets, must be reported to DVHA w/in ten (10) calendar days

- Changes can also include a non-periodic payment, an inheritance, or any change in CS income if the CS is receiving an income allocation from the LTC Medicaid recipient

What Follows After Long-Term Care (LTC) Medicaid Application Approval

5. Notification of Change in Circumstances (cont.)

- Interest payments on bank accounts and changes in Social Security payments or Medicare premiums deducted therefrom are usually not triggering events.

- Significant changes in expenses, such as changes in private health insurance premiums or CS shelter expenses should also be promptly disclosed.

What Follows After Long-Term Care (LTC) Medicaid Application Approval

6. After-Acquired Assets

- When a LTC Medicaid recipient receives additional countable assets, such as from an inheritance (including an elective share from a deceased CS), it usually needs to be addressed as any other excess countable asset

What Follows After Long-Term Care (LTC) Medicaid Application Approval

6. After-Acquired Assets (cont.)

- Disclaiming the additional countable asset is not an option; it would trigger a transfer penalty

- Spending down or otherwise validly disposing of the asset should be done before the end of the calendar month in which the asset is received

What Follows After Long-Term Care (LTC) Medicaid Application Approval

B. Asset Treatment

1. Retitling Assets in the Name of the Community Spouse

- Up to one (1) year from the date of the eligibility determination for the LTC Medicaid recipient is allowed for retitling assets in the name of the CS alone.

- Crucial to retitle so LTC Medicaid eligibility is not threatened

- DVHA will verify retitling at the time of the first annual review of eligibility

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2. Estate Planning Considerations for the LTC Medicaid Recipient

- Recovery is allowed against the probate estates of LTC Medicaid recipients who are at least 55 at the time they received LTC Medicaid services, with certain limitations

- Probate claim would only be filed
  i. after death of any surviving spouse; and
  ii. when there is no surviving child under 21, blind or permanently and totally disabled as defined by Social Security Administration

What Follows After Long-Term Care (LTC) Medicaid Application Approval

2. Estate Planning Considerations for the LTC Medicaid Recipient (cont.)

- After death of any surviving spouse, assume any Probate Estate which needs to be opened will be subject to a reimbursement claim being field by DVHA

- There are exceptions when DVHA will not pursue a reimbursement claim, such as undue hardship, but do not assume such a determination will be made

What Follows After Long-Term Care (LTC) Medicaid Application Approval

2. Estate Planning Considerations for the LTC Medicaid Recipient (cont.)

- In Vermont, it is only against a Probate Estate that a reimbursement claim may be filed.

- Just because an asset is excluded LTC Medicaid qualification purposes does not mean a reimbursement claim will not be filed after death if such asset is part of a Probate Estate.

What Follows After Long-Term Care (LTC) Medicaid Application Approval

2. Estate Planning Considerations for the LTC Medicaid Recipient (cont.)

- Assets owned by revocable trusts avoid probate
- But under LTC Medicaid rules, if a primary residence is owned by a revocable trust it is automatically a countable asset
- Other assets may be owned by revocable trusts without being deemed automatically countable.
- Titling in the name of a revocable trust does not, by itself, cause an otherwise countable asset to be excluded; the asset has to either meet the LTC Medicaid excluded asset rules or not exceed countable asset limit for the recipient ($2,000)

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2. Estate Planning Considerations for the Community Spouse

- CS has wide discretion in the use and enjoyment of assets held by them as part of the CSRA

- After initial LTC Medicaid qualification of the IS, DVHA does not concern itself with any assets acquired through accumulated unspent income or the receipt of other assets (i.e., an inheritance) that add to the CS' net worth.

- After initial qualification, the CS may even gift assets or income without it impacting the IS, although it may affect the CS' own eligibility if the CS needs LTC Medicaid within five (5) years of the gift.

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2. Estate Planning Considerations for the Community Spouse (cont.)

- CS should avoid leaving a Probate Estate in order to avoid LTC Medicaid reimbursement claims.

- If the IS is dead, then leaving a Probate Estate can definitely be avoided through the use of revocable trusts, joint ownerships, transfer on death designations, payable on death designations and beneficiary designations.

- If the CS predeceases the IS, however, the concept of “elective share” comes into relevance. See 14 V.S.A. Sec. 319