Special Report – May 2011
A Primer on Medicaid

Prepared by Stephen Geist
Host of the radio show "The Retirement Guy" every Saturday at 7:30 AM on KNUS 710 on your AM dial
AND…Visit Steve's website at: www.RetirementWize.com

Hello! My name is Steve Geist, I'm a Financial Strategist and I specialize in Safe Retirement Plan Solutions that are tailored with care. More specifically, I help my clients tackle complicated retirement issues and guide them towards easy-to-understand solutions designed to safely preserve and grow their retirement wealth. Now, more than ever, people over the age of 50 are clamoring for education and advice regarding their retirement.

One way I like to teach my clients and my seminar students about Retirement is to present it as a Puzzle. And, I like to present the puzzle as containing five primary pieces. And they are:

- ✓ Puzzle Piece #1: Safeguarding Your Accumulated Assets
- ✓ Puzzle Piece #2: Setting up a Lifetime of Guaranteed Income
- ✓ Puzzle Piece #3: Addressing Taxes in Retirement and Beyond
- ✓ Puzzle Piece #4: Having Proper Coverage for Health Care and Long Term Care
- ✓ Puzzle Piece #5: Leaving a Legacy for your Loved Ones

So in this Special Report let me present to you a primer on Medicaid an important part of Retirement Puzzle Piece #4 – Having Proper Coverage for Health Care and Long-Term Care (LTC).

My goal in this Special Report is to get you to realize that despite how an attorney might help you hide your assets in order to qualify for this program, Medicaid is absolutely the worst and last resort you should ever consider in the pursuit of long-term care.

In 1995, Medicaid was established as Title 19 of the Amendment to the Social Security Act. Today, Medicaid provides health and long-term coverage for over 52 million low-income people. Medicaid today is the largest public source of funding for long-term care in the United States.

Even so, Medicaid is not available to everyone who needs LTC services. It is available only to certain low income individuals and families who fit into particular eligibility groups. Those who apply to Medicaid for payment of LTC services must meet both financial and functional eligibility criteria in order to qualify. To qualify financially, recipients must spend down their assets to an impoverished level.

Medicaid programs are administered by the individual states. And by law, the federal government's share of a state's Medicaid expenditures will be no less than 50%. That means that currently, for every $1 in qualifying Medicaid expense paid by a state, the federal government will reimburse the state at least 50 cents.

Many seniors who find themselves needing LTC and who do not have LTC insurance, they begin paying for LTC services themselves. And, unfortunately, most of these people quickly realize that their financial resources are inadequate to cover the high cost of home care or the high cost of a lengthy stay in a nursing home.

Some seniors believe that Medicare will come to their rescue. But, in fact, Medicare does not cover LTC.

In the past, a person needing LTC might have turned to family or friends to receive unpaid and unskilled care. Today, however, with greater rates of divorce, dual career families, and mobility issues, well-meaning family and friends find they are not able to keep up with the physical and emotional demands of providing LTC in addition to their many other responsibilities in life.

So, for those without insurance coverage and without significant financial or family care resources, the only recourse to LTC is through the Medicaid program.

Although the federal government sets general guidelines for the program, the Medicaid requirements are actually established by each state. Whether you are eligible for Medicaid depends on the state in which you live and the rules that specific state imposes.

Even when Medicaid does pay for LTC, the conditions are not the most favorable.

For example, assisted living facilities, which allow residents some privacy and independence, often do not accept Medicaid patients. And while most nursing homes will accept Medicaid, they will limit how many Medicaid beds are available. Applicants can face long waits for the nursing homes that they prefer. Many times, a person must settle for a facility far away from their home and family. The placement process differs from state to state, but in some states, patients must take the first Medicaid bed that opens up, no matter where it is located.

To be eligible for Medicaid, you must first "spend down" your assets to a level that qualifies you for benefits. In other words, your private or family finances must be depleted to the extent that you can now apply to receive LTC services from Medicaid.

Unfortunately, if you expect Medicaid to pay for your LTC needs, you stand to lose much more than just your assets. You will also likely lose your independence, control and dignity as well. The irony of spending down your assets is that once you are impoverished enough to qualify for Medicaid and living in a Medicaid nursing home, you are now so poor that you will remain in that home for the rest of your life.

For those without LTC insurance or the financial resources, Medicaid is the only hope of funding LTC. And though states make their own rules and the word "impoverished" means different things in different states, as a general rule, to qualify for Medicaid, you must have $2,000 or less in assets excluding your house, your car, burial fund, and a few other assets. In addition, you must apply any income you receive such as Social Security or pension income, toward the cost of your care.

<u>Medicaid Eligibility</u>

Medicaid eligibility for LTC first requires that you have a medical need – some kind of impairment that limits your ability to perform activities of daily living (ADLs) – and that requires institutionalized care.

The 2nd rule for determining Medicaid eligibility is the amount of assets you own. Again, as a general rule, you may have no more than $2,000 in countable assets to be eligible for assistance. To this end, your assets are deemed either non-exempt or exempt.

<u>Non-Exempt Assets</u>

All <u>non-exempt</u> assets are considered countable in determining Medicaid eligibility. That is, they can be "counted" in determining the amount of property you own. Nonexempt or countable assets include: cash, checking and savings accounts, CDs and money market accounts, stocks, mutual funds, bonds and other investment holdings, Deferred Annuities that have not been annuitized, IRAs, 401Ks, and other retirement funds and vacation and investment property.

While some minor exceptions do exist to these rules, all money and property that can be valued and turned into cash is a countable asset, unless it is specifically exempt. If the value of the total countable assets exceeds the Medicaid eligibility limit of $2,000, then you must spend down your assets to the limit before Medicaid assistance will be available.

SPECIAL REPORT TIMEOUT

In case you belong to a group, club, church, association or any type of organization that invites outside speakers to give interesting talks – please know that as a community service, I would be delighted to speak at your next group meeting. And I would speak on a topic that would be both informative and relevant to Retirement. Just call my office and let me know how I might be of service.

Exempt Assets

Exempt assets are not counted in determining Medicaid eligibility. Exempt assets would include

1. Your primary residence so as long as the equity value in the home is $500,000 or less. As a sidebar: The exempt value of your primary residence is <u>unlimited</u> if you, as the Medicaid applicant, has certain family members living there with you such as your spouse or children under the age of 21.
2. Automobile – one automobile of any value is exempt if it is used by a household member.
3. Household belongings – Includes jewelry, clothing, and similar items.

The fact that property or assets are exempt, or noncountable, for purposes of determining Medicare LTC eligibility does not necessarily protect them in the future. To the extent that any noncountable property is held by the Medicaid recipient at his or her death and is part of his or her estate, then Medicaid reserves the right to take from the estate the amount it paid for nursing home or skilled facility care. This is done through a process known as estate recovery, which I'll discuss later in this report.

Income Rules

Regarding income, generally the Medicaid program requires Medicaid recipients to contribute almost all of their available income toward the cost of their care. As a sidebar: Currently the Medicaid rules <u>do not</u> require that the income of the spouse be spent on the Medicaid recipient's care.

Examples of your income that would be counted in determining Medicaid eligibility include: wages, interest earnings, dividends, Social Security benefits, veteran's benefits, and pensions benefits.

Transfer of Assets

Depending on the state rules and the type of care in question, you may be disqualified from receiving Medicaid benefits for a certain period if you give property away (or sell it for less than its full value) to anyone other than your spouse in order to meet the Medicaid asset limits. The purpose of this rule is to discourage applicants from gifting or transferring property simply to become poor enough to qualify for Medicaid.

As of 1/1/97 it became a crime to attempt to transfer assets in order to qualify for Medicaid. But despite this law, the Medicaid eligibility rules contain many loopholes that enable the law to be circumvented. The ability to work around Medicaid penalties has given rise to a specialty of law known as <u>Medicaid Planning</u> which is a form of asset preservation that seeks to avoid the loss of assets through legal transfer without risking Medicaid eligibility. This type of planning has come under increasing scrutiny in recent years and should be undertaken only by reputable and qualified legal professionals.

If an asset is improperly transferred, Medicaid will still count that asset along with the applicant's other assets. When such transfers are added to other non-exempt assets, the total will often exceed the maximum allowable for Medicaid qualification. The result will be a period of ineligibility – or waiting period – before Medicaid coverage begins.

This transfer rule applies for a specified period before a person applies for Medicaid. This period is known as the look-back period. States may "look back" through this period in order to evaluate a Medicaid applicant's financial transactions.

SPECIAL REPORT TIMEOUT

I'd like to point out that in addition to hosting the Retirement Guy radio show, which I have done now for well over a year, I also conduct free (open to the public) educational events. I hold these workshops throughout the Denver area throughout the year. Over the past several years, I have made these presentations to thousands of people both in and near retirement. If you would like to meet me in person and learn about retirement, in a public setting, then please call or email me with a request for the date, time and location of my next event.

So for transfers made on or after 2/8/06, the look-back period is now five years. That means that if, during the five years before applying for Medicaid, a transfer of property was made, it can result in a penalty period. The penalty period is the waiting period – the period during which Medicaid will not pay for care.

Certain transfers are allowed and will not be penalized. These include: transfers to a spouse; transfers to a third party for the benefit of the spouse; and transfers to disabled individuals. Also, no transfer penalty applies if a Medicaid recipient transfers a home to

1. a spouse who is living in the home;
2. children under age 21 who are living in the home; and
3. a child over the age of 21 living in the home for at least two years before the applicant was admitted to the nursing home and who provided care to the applicant in order to help delay the applicant's admission to the nursing home.

Spousal Impoverishment Rule:

Rather than requiring a couple to reduce their joint income to the poverty level, federal law permits the spouse to maintain a higher income for support. This is called a monthly maintenance needs allowance.

In Colorado, for example, the spouse is allowed to keep up to a monthly maximum of $2,739. Also, no portion of the spouse's own income (such as Social Security or pension income) is required to be assigned to Medicaid or diverted to cover the cost of care for the institutionalized spouse.

As for Assets under the Spousal Impoverishment Rule: the spouse can retain half or more of the couple's combined assets, subject to state and federal limits which in Colorado is $109,560. Assets in excess of this maximum are required to be spent down on the institutionalized spouse's care.

Miller Trust

The rules that allow states to set a cap on income also provide a means to circumvent it. This is done by setting up what is known as a Miller Trust. A Miller Trust can be established either by the family of the applicant or the nursing facility. The trust must provide:

1. The Beneficiary of the trust be the Medicaid applicant
2. The Applicant's income must be paid into the trust
3. The Beneficiary (the applicant) will receive a monthly personal needs allowance from the Trust
4. The Applicant's spouse must be paid a sum equal to the minimum monthly maintenance needs allowance
5. To cover the applicant's care, the Trustee will pay the nursing home, an amount less than the current cap
6. The balance remains in trust, and at the death of the applicant, the trust turns the balance over to the state.

Medicaid Estate Recovery:

Let me begin by repeating that by requiring people to spend down their assets before they are eligible for Medicaid LTC benefits has encouraged many people to take part in illegal, or at least suspect, means of sheltering their assets from Medicaid's grasp. With the passage of the Omnibus Budget Reconciliation Act of 1993, Congress determined that when a person has received Medicaid benefits and owned assets at the time of his or her death, the state must determine whether it can recover any assets from the estate of the deceased to cover the Medicaid benefits that were paid out. This is known as the Medicaid Estate Recovery Program.

Estate recovery procedures are not initiated until after the Medicaid recipient's death if unmarried or after the death of the surviving spouse. In some states, the only legal interest subject to Medicaid recovery is the individual's probatable estate. These are assets titled in the sole name of the individual. Stock owned with a transfer-on-death provision or a bank account with a pay-on-death provision fall outside probate, as do annuity interests. These are examples of nonprobate assets, because they pass outside the will and are, therefore, protected against the state's claim for reimbursement.

Other sates, however, have passed laws that permit recovery against an expanded definition of estate. Depending on the state, this definition could include joint property, life estates, living trusts, and similar assets in which the deceased had a legal interest at the time of death.

Assets subject to recovery include both real and personal property. Real property includes homes and land. Personal property includes vehicles, furniture, bank accounts and similar assets.

A New Program in Colorado

Colorado's Long-Term Care Partnership Program is an alliance between the private insurance industry and the state government to help the residents of Colorado plan for future long-term care needs without depleting all of their assets to pay for the care.

It is designed to encourage and reward Colorado residents for planning ahead for their future LTC needs.
The goal of the program is to increase the number of people that purchase long-term care insurance, and thereby help reduce the number of people that eventually apply for Medicaid

Since January 1st of 2008, Colorado now allows insurers to sell these qualified LTC Partnership policies. Under this Partnership - For every dollar that a LTC Partnership insurance policy pays out in benefits, a dollar of personal assets can be protected – that means disregarded during the Medicaid eligibility review and disregarded at the time of Medicaid estate recovery as well.

In Closing

Let me summarize some key points from this Special Report on Medicaid:

1. Medicaid is the government program for the poor. Among other rules, it requires that you be impoverished to qualify for the program; that is --$2,000.00 or less in assets.
2. Medicaid reform is here to stay, especially in the New Normal following the recent recession. The message from both federal and state governments is very clear — if you have assets to protect, dependence on government welfare programs such as Medicaid will not be a viable option.
3. The federal government and most states have changed the rules on what Medicaid applicants can do to qualify for benefits. As one example, the Medicaid Qualification rule on look-back period for transferring assets has changed from three years to five years. Also, if a transfer was made, the penalty calculation will now be figured from the date of application for Medicaid instead of from the date of the transfer.
4. Financially challenged Medicaid only offers minimal services, and all too often delivers poor quality of care. And in most states, Medicaid only covers Nursing Homes. And space-available Medicaid facilities may be a great distances from family.

5. If you have to rely on Medicaid for your long term care needs, 49 of 50 states have now adopted laws to attach a lien against the equity in your home. So when you, as the Medicaid patient, and your spouse passes away, Medicaid will require repayment for the money they contributed toward your health care and they will take it from your home equity if necessary.

The primary point here is that a well designed LTC policy is much better than resorting to Medicaid for your future long care needs. Remember that Colorado now allows insurers to sell qualified LTC Partnership policies. That means that for every dollar that a LTC Partnership insurance policy pays out in benefits, a dollar of personal assets can be protected -- that means disregarded during the Medicaid eligibility review and disregarded at the time of Medicaid estate recovery as well.

So, a primary reason why you might want to contact me for assistance is that you would like some help in purchasing a Colorado qualified LTC Partnership Policy in order to have excellent LTC protection and facilitate Medicaid should it become necessary later in life.

I wish you a long, happy and financially secure retirement. And if I can be of any assistance, please do not hesitate to contact me.

Sincerely;
Stephen Geist
Financial Strategist and Safe Retirement Plan Specialist
303-586-4109
www.RetirementWize.com