

Chapter 21: Medi-Cal and Long-Term Care

Overview and Types of Long-Term Care

Medi-Cal pays for over half of all non-hospital-based nursing home care in the state.¹ While we may think of long-term care as a place where many seniors or people with disabilities may live for many years, over 77% of nursing home stays last less than three months.² Less than 10% of nursing home stays are longer than one year.³ Medi-Cal is an extremely important source of financing for long-term care facilities, even if the stays in those facilities are not very long-term.

“Long-term care” may encompass stays in a number of different types of facilities, but Medi-Cal only pays for some of these types of facilities. Primarily, Medi-Cal pays for nursing facility services for a person who needs skilled nursing care, rehabilitation services, or because of a person’s mental or physical disability, she requires health-related services on a regular basis.⁴

The general rule is that federal Medicaid payments do not pay for care or services for any individual who is an inmate of a public institution (except if the person is a patient in a medical institution.)⁵ Thus, Medicaid will not pay for the healthcare of inmates of jails or prisons or generally for people in public facilities for mental diseases.⁶ However, Medicaid pays for inpatient psychiatric hospital services for people under age 21.⁷ Medicaid will pay for services for people with developmental disabilities in intermediate care facilities, but not for people under age 65 who are patients in institutions for mental diseases.⁸ Nevertheless, an individual in an institution for mental diseases may be eligible for state-only Medi-Cal.⁹ An individual who is in a public educational or vocational training institution for purposes of securing education or vocational training may receive Medi-Cal, if otherwise eligible.¹⁰ As well, a person in an institution for people with developmental disabilities or related conditions may be eligible for Medi-Cal.¹¹ Since Foster Care children are automatically eligible for Medi-Cal, they may receive Medi-Cal services regardless of whether they

¹ California HealthCare Foundation, *The Changing Face of California’s Nursing Home Industry*, 2007. Available at: www.chcf.org/documents/hospitals/ChangingFaceNursingHome07.pdf.

² *Id.*

³ *Id.*

⁴ 42 U.S.C. § 1396r(a).

⁵ 42 U.S.C. § 1396d(a)(xiii)(28)(A), 42 C.F.R. § 435.1009(a)(1). “Inmate of a public institution” is defined in 42 C.F.R. § 435.1010, Cal. Code Regs. tit. 22, § 50273.

⁶ This includes detention centers, CYA camps, and many other facilities for children who may be considered “delinquent.” Medi-Cal Eligibility Procedures Manual, 6B-1. Note that an institution for people with developmental disabilities (or “mentally retarded” as federal rules and older literature uses the term) are not included in the definition of “institutions for mental diseases.” See the definitions of “*Institution for mental diseases*” and “*Institution for the mentally retarded or persons with related conditions*” in 42 C.F.R. § 435.1010. See Medi-Cal Eligibility Procedures Manual, 6E-1.

⁷ 42 U.S.C. § 1396d(a)(xiii)(16), 42 C.F.R. § 435.1009(a)(2).

⁸ 42 U.S.C. §§ 1396a(a)(31), 1396d(a)(xiii)(14), 1396d(a)(xiii)(15), 1396d(a)(xiii)(28)(B), 42 C.F.R. § 435.1009(a)(2).

⁹ Medi-Cal Eligibility Procedures Manual, 6E.

¹⁰ 42 C.F.R. § 435.1010 Definition of an “*Inmate of a public institution*” (a). This would include a student resident at a state school for blind or deaf students. Medi-Cal Eligibility Procedures Manual, 6B-1.

¹¹ 42 C.F.R. 1010, Medi-Cal Eligibility Procedures Manual, 6B-2.

are temporarily in an institution where they may otherwise be ineligible for Medi-Cal.¹² Medi-Cal pays for long-term care for a few immigrants who do not have satisfactory immigration status.¹³

Many people may spend time living in “long-term care” that requires less intensive care. “Assisted living” facilities may include board and care facilities, “retirement homes,” or “residential care for the elderly” facilities. These facilities usually do not have medical personnel on staff, and Medi-Cal generally does not pay for stays in these types of facilities.¹⁴

Overview of Long-Term Care for Elderly People

Previous chapters have discussed eligibility for various Medi-Cal programs. In particular, see Chapters 3, 4, 5, and 7. Long-term care is a covered benefit for people who are eligible for full scope Medi-Cal under these rules, as well as for some people who are only eligible for restricted scope Medi-Cal benefits.

Many people who would not be eligible for Medi-Cal while living at home due to their income or assets may qualify for Medi-Cal when they are living in a long-term care facility.¹⁵ In particular, if one spouse lives in long-term care while the other does not, then the spouse who is not living in long-term care is allowed to keep resources and income that will enable her to continue to live in the home or “in the community.”¹⁶ This spouse is frequently referred to as the “community spouse.”¹⁷ The spouse living in long-term care is referred to as the “institutionalized spouse.”¹⁸

Allocation of Income for Individuals or Families With Someone in Long-Term Care

An individual in long-term care will be able to keep a certain amount of income, the “maintenance of need.” If the individual will only be in the long-term care facility for part of a month, then the maintenance of need is determined according to the share of cost levels described in Chapter 5.¹⁹ However, if the individual will be in the long-term care facility for an entire month, she is only allowed a \$35 maintenance need for personal and incidental needs.²⁰ This is also called the “personal needs allowance.” The rest of the income allotted to her will go to help pay for her long-term care. If the individual does not have a spouse or family living in the home and she is expected to return to her home—whether she owns or rents it—, then she can keep an additional

¹² Medi-Cal Eligibility Procedures Manual, 6D-2.

¹³ Cal. Welf. & Inst. Code § 14007.65.

¹⁴ For more information about these types of facilities, see Bet Tzedek Legal Services and National Senior Citizens Law Center, *Assisted Living Companion: An Easy-to-Use Guide to Assisted Living in California*, available at: www.bettzedek.org/PDF/BTAsstLivingCompanionBook.pdf. California currently has a demonstration project in Los Angeles, Sacramento, and San Joaquin counties under which Medi-Cal pays for assisted living for a limited number of beneficiaries in order to determine whether this placement may be a feasible alternative to nursing home care. (See p. 22 of *Assisted Living Companion*.)

¹⁵ 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(V), 1396r-5.

¹⁶ 42 U.S.C. §§ 1396r-5(d), 1396r-5(f).

¹⁷ 42 U.S.C. § 1396r-5(h)(2).

¹⁸ 42 U.S.C. § 1396r-5(h)(1).

¹⁹ Cal. Code Regs. tit. 22, § 50605(a)(3).

²⁰ Cal. Code Regs. tit. 22, § 50605(a)(1).

amount that would be necessary for upkeep of that home.²¹ She may also be able to retain additional income if she must pay for the support of a disabled relative, other than a spouse or child.²²

If the individual has a community spouse living at home, the community spouse is allowed to keep a greater amount of the family income and assets in order that she does not become impoverished. When a medically needy, aged, blind or disabled beneficiary or the spouse of that beneficiary goes into long-term care or board and care and the remaining family members are not on public assistance, the beneficiary is put into a MFBU separate from the spouse or remaining family members.²³ The nonexempt income that exceeds the person in long-term care's own maintenance need is allocated to the spouse and/or children, including stepchildren.²⁴ The spouse is entitled to a maximum spousal income allocation/minimum monthly maintenance need allowance, which is \$2,610 per month for 2008.²⁵

A person receiving SSI/SSP will often lose that income when she enters long-term care. Under the *Craig v. Bontá* lawsuit, and SB 87 requirements, her Medi-Cal should continue pending a county determination of her eligibility for Medi-Cal.²⁶ The *Craig v. Bontá* lawsuit is discussed in Chapter 7. SB 87 requirements are discussed in Chapters 6 and 7.

Allocation of Resources for Individuals or Families With Someone in Long-Term Care

As in other aspects of Medi-Cal, the principal residence is an excluded resource when determining eligibility for long-term care.²⁷ The tricky point is that a person who is in long-term care, of course, is not living in that residence on a day-to-day basis and may appear to plan to spend the rest of her life in the long-term care setting. However, the principal residence remains exempt as long as the beneficiary or her representative expresses an intent to return to the home.²⁸ This intent is subjective, and a county worker may not require verification of a beneficiary's ability to return to the home, unless the beneficiary requests supplemental maintenance need for the home's upkeep while she is in long-term care.²⁹ Supplemental maintenance need is additional income that a beneficiary in long-term care may be able to keep besides the small personal needs allowance she may keep for incidentals and personal items while she is in long-term care.

California, like many states, is still implementing provisions of the Deficit Reduction Act of 2005, and under that Act, people applying for and granted Medicaid may not receive coverage for long-term care services if they have \$500,000 (or \$750,000, at the state's option) or more in home equity.³⁰ Considering the high cost of housing in California, many families may be even more

²¹ Cal. Code Regs. tit. 22, § 50605(b).

²² Cal. Code Regs. tit. 22, § 50605(d).

²³ Cal. Code Regs. tit. 22, § 50563(a).

²⁴ Cal. Code Regs. tit. 22, § 50563(a)(1), (a)(2).

²⁵ ACWDL 07-22 (Nov. 7, 2007).

²⁶ ACWDLs 03-24 (May 6, 2003), 03-52 (Nov. 14, 2003)

²⁷ Cal. Welf. & Inst. Code § 14006.

²⁸ Cal. Welf. & Inst. Code § 14006(b)(2), Cal. Code Regs. tit. 22, § 50425(c)(3).

²⁹ ACWDL 95-48 (Aug. 24, 1995), Cal. Code Regs. tit. 22, § 50605(b)(3).

³⁰ 42 U.S.C. § 1396p(f).

tempted to transfer home assets or take out loans on their homes in order to reduce the value of this otherwise exempt asset.

A single individual or a married individual who is in long-term care is allowed to retain \$2,000 in liquid assets, such as bank accounts, as is the case with other aspects of Medi-Cal.

If the individual is married, the community spouse may keep a large portion of the couple's assets—not including the exempt home. This group of assets is referred to as the Community Spouse Resource Allowance (CSRA). The CSRA increases annually and for 2008, that amount is \$104,400.³¹

Income and Resource Transfers for People who Enter Long-Term Care

A great concern of many, particularly older, Medi-Cal beneficiaries is keeping assets within the family while avoiding the possible deleterious effects of transferring assets to other family members. As noted above, the Medicaid program allows for certain allocation or transfer of income and resources from the institutionalized spouse to the community spouse.³² However, transferring the wrong assets at the wrong time to other family members can result in denial of Medi-Cal coverage for a person's long-term care for a period of months or years. Under the Deficit Reduction Act of 2005, the federal government increased the severity of the transfer of assets provisions, and the State of California is in the process of updating its rules to reflect these changes.³³ Therefore, an individual who may need to enter long-term care in the foreseeable future should always seek the advice of an estate planning professional before transferring assets.

Transferring assets may result in a penalty to the beneficiary—a period of months during which Medi-Cal will not pay for long-term care services.³⁴ The general rule is that if the institutionalized spouse or community spouse disposes of assets for less than market value on or after the “look-back date,” the Medicaid program will not pay for the beneficiary's long-term care or home and community-based care during a period of months.³⁵ The disqualification period is based on the uncompensated value of the assets disposed of divided by the average monthly cost of nursing facility services in the state to a private pay patient.³⁶ For example, if the beneficiary gives away \$10,000 in assets for no compensation and the average monthly cost for a nursing home bed in the state is \$2,000 per month, the state Medicaid program could impose a penalty of five months (i.e. $10,000/2,000 = 5$) during which the state would not pay for the individual's long-term care. The look-back date and the applicability of the penalty to any current need for long-term care depends on whether the asset disposition was made before or after February 8, 2006 (the date of the enactment of the Deficit Reduction Act of 2005).³⁷

³¹ 42 U.S.C. §§ 1396r-5(f)(2), 1396r-5(g), ACWDL 07-22 (Nov. 7, 2007).

³² 42 U.S.C. § 1396r-5(f).

³³ In particular, see §§ 6011-6016 of the Deficit Reduction Act of 2005, Pub. L. No. 109-171 (Feb. 8, 2006). Advocates may find the DRA analysis from the NHeLP Health Advocate No. 224, Spring 2006 to be helpful. It is available at: www.healthlaw.org/library/item.106778-

[The Deficit Reduction Act of 2005 Congress Targets Beneficiaries for Cuts J.](http://www.healthlaw.org/library/item.106778-The-Deficit-Reduction-Act-of-2005-Congress-Targets-Beneficiaries-for-Cuts-J)

³⁴ 42 U.S.C. § 1396p(c).

³⁵ 42 U.S.C. § 1396p(c)(1)(A).

³⁶ 42 U.S.C. § 1396p(c)(1)(E).

³⁷ 42 U.S.C. § 1396p(c)(1)(B)(i).

While noting that one should be cautious about transferring assets prior to entering long-term care, the home may be an exempt resource and transferring the home and title to the home to certain family members may not result in a period of ineligibility.³⁸

For a thorough discussion of transfer of assets penalties in California, check materials on the CANHR Web site (www.canhr.org).

Many elderly Medi-Cal beneficiaries worry about the state placing liens on their property or taking the family home if they need Medi-Cal services, particularly long-term care. This worry should never be a reason for a beneficiary to forego medically necessary care, and the issue of Medi-Cal liens is discussed in Chapter 18.

Legal Resources for Most Long-Term Care Issues

Advocacy Tip ► Anyone who may need Medi-Cal coverage, particularly an elderly person who may need coverage for long-term care, should always get good legal advice from an estate planning attorney before selling or giving away real property or other assets. Many older people unnecessarily give away a family home to adult sons or daughters or give away assets that may leave them ineligible for Medi-Cal when they most need its coverage. People with even modest assets should consult an attorney, learn about what assets may be exempt under Medi-Cal—and which are not—as well as ask about creating legal trusts.

An advocate who needs additional information about long-term care issues should consult one or more of the following organizations. This chapter could not have been written without the assistance of the publications of some of these organizations:

Protection and Advocacy, Inc. (PAI)

PAI assists people with developmental disabilities, including clients of regional centers, with legal issues. PAI would be a good resource for helping a person with a developmental disability or related condition with a Medi-Cal problem. PAI has resources for advocates and consumers on its Web site: <http://www.pai-ca.org>.

California Advocates for Nursing Home Reform (CANHR)

CANHR provides advocacy and consumer assistance on Medi-Cal long-term care issues. CANHR works to improve care for people in nursing homes while seeking ways to enable families to afford long-term care without impoverishment. CANHR's Web site (www.canhr.org) has a wealth of information on Medi-Cal coverage of long-term care, spousal impoverishment rules, residential care/assisted living facilities for seniors.

National Senior Citizens Law Center (NSCLC)

NSCLC is a legal services support center for legal assistance programs. NSCLC can provide a wide variety of legal assistance to advocates regarding seniors' issues including Medicaid long-term care eligibility rules and understanding assisted living facilities. Their Web site, www.nsclc.org, has links to reports and manuals on these issues.

³⁸ 42 U.S.C. § 1396p(c)(2), Cal. Welf. & Inst. Code § 14006.2, 14006.3, 14006.4, 14007.

Bet Tzedek Legal Services

Bet Tzedek provides legal services to low-income people in Los Angeles County. The Nursing Home Advocacy Project provides legal assistance to frail, elderly residents of nursing homes. Bet Tzedek has excellent nursing home and assisted living guides which are available in both English and Spanish and are applicable throughout California. The guides are available on the Bet Tzedek Web site, www.bettzedek.org.
