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ASSISTED LIVING AND SPECIAL ASSISTANCE

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Assisted Living and Special Assistance

by David Silver

I previously submitted an article explaining Medicaid and skilled nursing care. However, what happens if a person (usually elderly) needs help, but doesn't need a nurse? These people may be unable to take care of themselves at home, but would not meet the medical test to qualify for skilled nursing care or Medicaid. In North Carolina, if a person can no longer take care of themselves at home, but are not sick enough to require nursing care, they could be eligible for care at an assisted living facility.

Assisted living facilities offer care to people who are unable to perform some of the activities of daily living (eating, bathing, dressing, toileting, ambulating and continence). Some people choose to live in an assisted living facility for comfort, convenience or companionship, while other people need to go to an assisted living facility because they can't get adequate care at home. Some assisted living facilities also have special memory-care units that take care of people living with Alzheimer's or other forms of dementia (no matter how much you love your spouse or parent, there

is usually a time when you can no longer adequately provide care at home for a loved one who is suffering from dementia). While the cost of an assisted living facility is dependent upon the amount of individualized care required, the cost of most facilities in Eastern North Carolina range from about \$2,400 per month to about \$4,800 per month. There are facilities that cost significantly more, but these high-end facilities are not the focus of this article. If you don't have a high fixed-monthly income, or a good long-term-care insurance policy, or if you aren't independently wealthy, how can you afford assisted living?

There are two main public benefits that could help pay for care at an assisted living facility: "Aid and Attendance" through the V.A., and "Special Assistance" through the state of North Carolina. "Aid and Attendance" provides a limited benefit to Veterans who served during a war time and their widows/widowers, but this program will have to be the subject of a future article.

If you meet the qualifications, Special Assistance will supplement your income to pay for your care at an assisted living facility. Special Assistance is sometimes called "NC's Medicaid," and well-meaning people will sometimes call it "Medicaid," but it is not Medicaid. The programs have similar rules, but the rules are just different enough to cause significant problems to the uninformed.

In order to qualify for Special Assistance, you must meet a medical test, an income test and an asset test. The medical test simply requires your doctor to fill out a form (called an FL-2 form) stating that you require care at an assisted living facility, either in the general population or in a memory-care unit. The income test requires that your income be less than \$1,247.50 per month for the general population, or \$1,580.50 per month for the memory-care unit. Your spouse's income is not counted, but your gross income is counted (you need to include the amount withheld from your social security check for Medicare).

The final qualification test is the asset test. You may not have more than \$2,000 of "countable" assets. Unlike Medicaid, your spouse's assets don't count (so you can transfer all assets to your spouse). Any countable assets over \$2,000 must be "spent down." A residence and one vehicle are usually not countable assets, while cash, retirement accounts and investments usually are countable assets, meaning that these funds would have to be spent down. It is usually okay to spend down countable assets by pre-paying for a funeral, paying legitimate debts and paying for health care. There are many rules about what constitutes a "countable" asset and what is permissible when "spending down" assets, so it is often worthwhile to consult with an attorney specializing in elder law to discuss what can be done without disqualifying you for Medicaid.

While you can transfer assets to a spouse, you can't give away your assets to others in order to qualify for Special Assistance. If you have given away assets or transferred assets for less than full value within three years of applying for Special Assistance, you will be ineligible for Special Assistance for one month for every \$2,000 that you have transferred. This penalty period begins to run at the date of the transfer. There are times when gifting assets might be appropriate, there are ways to fix the damage done by past gifts, and there are strategies that can be implemented to preserve assets for a spouse or children, but the details of these circumstances would require individual legal analysis beyond the scope of this article.

Medicaid pays a part of the Special Assistance, so Medicaid will have a claim against your estate at your death for the part that Medicaid paid for your care at the assisted living facility. If you don't have anything in your estate when you die, then this claim is of no consequence. However, if you had some non-countable assets when you applied for Special Assistance (such as your residence) and these assets are part of your estate when you die, then these assets may have to be sold in order to pay Medicaid's claim in a process called "estate recovery." There are sometimes opportunities to protect assets from estate recovery. Additionally, since the eligibility rules for Special Assistance and for Medicaid are slightly different, you might have to take further action if you

need to transfer from assisted living to a skilled nursing facility. If it is important to you to try and ensure that your assets are protected for your spouse and kids at your death, then it is usually beneficial to discuss estate recovery with an attorney practicing in elder law.

If you need care at an assisted living facility, you might be unable to participate in any conversation regarding eligibility for Special Assistance and asset protection. For this reason, it is very important to have in place an adequate Power of Attorney in order to allow your loved ones to take action on your behalf. Not all Power of Attorneys are the same, so make sure you have one that will allow your loved-ones to perform any transaction that might be necessary to preserve your wealth should you require care at an assisted living facility.

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