

## MEDICAID MYTHS – PART II

By Ira Stewart Wiesner

Last month we began identifying the first five of the top ten myths surrounding Medicaid eligibility. This month we conclude that examination.



**Myth #6:** I can make annual tax-free gifts to bring my assets within Medicaid limits.

No. The IRS permits tax-free gifts of up to \$15,000 annually, but that is irrelevant for Medicaid. Under Medicaid's rules, all gifts (that means ALL GIFTS) made within sixty (60) months of applying for benefits are added up and divided by the average cost of nursing home care for

one month, which the State sets for 2018 at \$8,944. This means if the total of all gifts to all people during the "look-back" period is \$134,160, the Medicaid penalty period is 15 months.

**Myth #7:** If my spouse is in a nursing home, I will lose his/her income.

Maybe. If a community spouse has less than \$2,030 per month in income (which includes Social Security) he/she may be entitled to keep a portion of the spouse's income in the amount needed to bring the total

income up to that amount. In addition, if the community spouse has housing costs (generally because of mortgage, insurance, taxes and condo fees) that exceed \$609 per month, additional portions of the institutionalized spouse's income to cover the excess costs might be able to be diverted to the community spouse. Nevertheless, no more than \$3,090 can be diverted and this is reduced dollar for dollar by the community spouse's own income.

**Myth # 8:** If my spouse is in a nursing home, I have to contribute my income to the cost of care.

No. For Medicaid eligibility, all assets owned by husband, wife, and jointly are counted. However, the income belonging to the community spouse is protected.

**Myth #9:** If my wife is in the nursing home and on Medicaid, I can disinherit her under my will.

Generally not. Medicaid requires that if one spouse dies, the other must take at least the elective share amount (approximately 30%) of the estate. If they do not, Medicaid can assess a penalty based upon the amount they could have, but didn't receive.

**Myth #10:** Medicaid will pay for Assisted Living as well as Nursing Home costs.

Yes and No. Florida has a Medicaid program for Assisted Living as well as Nursing Home. However, it is a limited amount and there is a very long waiting list. The consequence of this is that even though an Assisted Living facility may accept Medicaid, there is likely no Medicaid available for that program.

There are many legal and accepted ways of Qualifying for Medicaid assistance. Always seek out qualified professionals to guide you in this process. An inadvertent mistake may present a hurdle that is at best, costly to undue, if at all possible.

Next month we will address Health Care Advance Directives and a number of recent Florida law changes that can dramatically impact their effectiveness.

### **About Ira Stewart Wiesner**

Ira Stewart Wiesner is a nationally recognized elder law attorney and founder of Advocates in Aging, the first elder law firm in Sarasota, Florida. He has lectured frequently and written on the subjects of asset preservation, care-giving of spouses and parents with chronic illnesses, drafting special needs trusts for disabled children and financing long-term care. He devotes a significant portion of his practice to sophisticated estate planning. However, the principal commitment and focus of his practice is on resolving the legal needs of the elderly and their families, and assisting families with planning for the needs and protection of disabled and dysfunctional children.

Mr. Wiesner is Board Certified as a Specialist in Elder Law. He holds a Master of Laws in Taxation (LL.M) degree from the University of Florida and a Master's Degree (M.A.) in Transpersonal Psychology from Naropa University. Ira has also earned Graduate Certificates from the University of South Florida in Advanced Gerontology and from Naropa University in Authentic Leadership.

Ira is a former President of the National Academy of Elder Law Attorneys as well as Past Chair of the Elder Law Section of the Florida Bar. In recognition of his efforts in advancing the legal needs of seniors, Mr. Wiesner has been honored as one of a select group of attorneys nationwide who have been selected as a Fellow of the National Academy of Elder Law Attorneys as well as a Fellow of the American College of Trust and Estate Counsel. Ira formerly served as a member of the Board of Directors and as Vice Chair of Jewish Children and Family Services, Inc., is a member of the Advisory Committee of the Academy of Special Needs Planners and various committees of the American Society on Aging.

For over 40 years, our firm has been laser-focused on providing legal guidance and direction to an aging population and those concerned about them. We are here to serve our clients and their families in a supportive and understanding, yet organized and efficient manner. Our commitment is to provide top-quality, cost-effective, and responsive representation through hard work, scholarship, and dedication.

Our principal goal is to provide our clients with the most advantageous strategies, professional assessment, and information to ensure that their goals are achieved. This encompasses the following fundamental questions:

- (1) What kind of legacy do I wish to leave?;
- (2) Who will care for me when I no longer can?;
- (3) How can I assure my wishes will be carried out?; and
- (4) How is my family going to pay for this?

Our firm goal is to provide holistic, client-centered, and comprehensive solutions to effectively address our clients' concerns. This is what "elder law" is and has always been.

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