NORTH CAROLINA NURSING HOME MEDICAID RULES: THE ENGLISH TRANSLATION

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Now in Charlotte and Asheboro

Is This YOU?

You've worked hard all your life for what you have. You're concerned about being left destitute by long term care costs. You'd like to leave something of your hard work to your children. You're tired of worrying about it all.

Or you're concerned about your mother's or father's health care needs, you are busy and don't know where to start, your prime concern is making sure your parent's assets are used in the best way possible for their care.

If I have just described you, then an understanding of Medicaid nursing home rules is important to you.

I'm Bob Mason. You can read about me on the back cover. When I'm not teaching and writing, I am a practicing lawyer. If you are in North Carolina, particularly in Charlotte or the Triad area, call me because I'd love to help.

You get to look at pictures of me throughout this booklet. They serve a useful function.

If you see me like this . . .

It means pay attention!

It means PLEASE don't do that!

NORTH CAROLINA NURSING HOME MEDICAID RULES:

THE ENGLISH TRANSLATION

Robert A. Mason, JD, CELA*

There can be no doubt but that the statutes and provisions in question, involving the financing of Medicare and Medicaid, are among the most completely impenetrable texts within human experience. Indeed, one approaches them at the level of specificity herein demanded with dread, for not only are they dense reading of the most tortuous kind, but Congress also revisits the area frequently, generously cutting and pruning in the process and making any solid grasp of the matters addressed merely a passing phase.

Rehabilitation Ass'n of Virginia v. Kozlowski, 42 F.3d 1444, 1450 (4th Cir. 1994) (Ervin, Chief Judge)

THE FOLLOWING SUMMARY IS MEANT TO BE FOR GENERAL INFORMATION. DO NOT RELY UPON THE FOLLOWING FOR DEFINITIVE LEGAL ADVICE. LEARN HERE. THEN SEE A GOOD ELDER LAW ATTORNEY.

INTRODUCTION

Paying for the costs of nursing home care is perhaps one of the biggest concerns for many families of the "greatest generation" and, for that matter, the aging boomers. As of 2018 payments to nursing homes exceeded the $200 billion point . . . and they'll keep growing from there. Of that total, just 10% is paid by Medicare, 5% by long term care insurance and Veterans' benefits. About 25% is privately paid. Medicaid picks up the greatest share at 60%.

As a practical matter, the people privately paying will do so until their savings and assets are exhausted before moving on to Medicaid. Medicare is not a welfare program (meaning you paid for it

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over all those work years with payroll withholding). Medicaid, on the other hand, is a type of welfare program (at least when it began in the 1960s). Therefore, to be eligible for Medicaid, you must become "impoverished" under the program's guidelines.

A nursing home does not have to admit someone on Medicaid; most nursing homes may not discharge a resident for switching to Medicaid; because of that it might make sense to private pay for a month or two. No nursing home may treat Medicaid residents differently from others.

For most individuals, the object of long-term care planning is to protect savings (by avoiding paying them to a nursing home) while simultaneously qualifying for nursing home Medicaid benefits. This can be done within the following rules of Medicaid eligibility.

In North Carolina, Medicaid is administered by the Division of Health Benefits of the Department of Health and Human Services (the "DHB"). Across the state, the county Departments of Social Services ("DSS") assist the DHB in Raleigh with local program management. However, in order to qualify for federal reimbursement, the state program must comply with applicable federal statutes and regulations. So the following explanation includes both North Carolina and federal law as applicable.

This paper discusses the basics of North Carolina nursing home Medicaid benefits. The first section discusses the Medicaid asset rules; namely, the type and amount of assets that an individual or couple may own and qualify for nursing home benefits.

The second section reviews the transfer penalties that may apply if an individual or couple transfers assets within five years of applying for Medicaid.

The third section outlines the income rules applicable to the Medicaid nursing home benefit.

The final section reviews liens, estate recovery and applications.

THE ASSET RULES

The basic rule of nursing home Medicaid eligibility is that an applicant, whether single or married, may have no more than $2,000 in

"countable" assets in his or her name. In other words, when someone applies for Medicaid a very careful inventory of all that person's (or couple's) assets is taken. The assets are divided into two types: Countable and Noncountable.

If the applicant is married, the spouse is called the Community Spouse, and there are rules concerning how many countable assets the Community Spouse may keep. Those rules will be discussed further below.

"Countable" assets generally include all belongings except for (1) personal possessions, such as clothing, furniture, and jewelry, (2) one motor vehicle, (3) the applicant's principal residence, and (4) assets that are considered inaccessible for one reason or another. The asset rules are quite complex. This paper will attempt to untangle the major rules.

Keep in mind, the rules discussed in this part relate to qualifying for Medicaid and have nothing to do with transferring those assets or whether those assets might be subject to estate recovery upon the death of the applicant. Those rules will be discussed in detail below.

Real Property: The Home

A home with equity of less than $636,000 will not be considered a countable asset and, therefore, will not be counted against the asset limits for Medicaid eligibility purposes as long as the nursing home resident intends to return home or his or her spouse or other dependent relatives live there.

If Mom sells her home for $100,000 and then goes to the nursing home she now has $100,000 cash—countable! The home would not have been countable.

It does not matter if it does not appear likely that the nursing home resident will ever be able to return home; the intent to return home by itself preserves the property's character as the person's principal place of residence and thus as a noncountable resource.

Further, the $636,000 equity limit does not apply if the home is occupied by a spouse or other dependent relative of the applicant.

The "Home" also includes an unlimited amount of real property (subject to the $636,000 equity rule, if applicable). As a result, for all practical purposes, nursing home residents do not have to sell their homes in order to qualify for Medicaid.

Do keep in mind, that while the Home does not count for Medicaid qualification purposes, it may likely be subject to estate recovery later after the death of the Medicaid applicant and his or her spouse. Estate Recovery will be discussed further below.

Real Property: Tenancies-in-Common

A tenancy-in-common is a method of holding title to real property jointly with others. The percentages need not be equal. Each "tenant-in-common" has an equal right to use the real property. Upon sale of the real property, the proceeds are divided according to the percentage ownership interests. Each tenancy-in-common interest can be separately sold, transferred as a gift, and passed on under a Will.

Tenancy-in-common property is NOT countable property for purposes of Medicaid qualification. However, it is available for estate recovery and may raise transfer issues if later transferred.

While a tenancy-in-common interest in real property will not be considered a countable asset, do keep in mind that if a tenancy-in-common is set up within five years of applying for Medicaid, there might be a transfer penalty applied to the value of the tenancy-in-common interest transferred to the other person. This will be discussed further below under the Transfer Penalty discussion.

Real Property: Life Estates

These are often referred to as "life time rights" or "life rights.” In this type of ownership, one owner is referred to as the Life Tenant, the other as the Remainder Interest.

The Life Tenant has a current ownership interest that brings with it the exclusive right to occupy and use the premises for the rest of her life. Life Tenants are legally obligated to maintain the premises, pay the taxes and keep it insured. The Remainder Interest holder

has a current ownership interest, too, in as much as he may transfer that interest at anytime. The Remainder Interest holder does not have the right to use or occupy the premises, however, until the Life Tenant has died.

Once the Life Tenant has died, the property passes automatically to the Remainder Interests and free of liens the Life Tenant may have added to the property *after* the life tenancy was created.

Life Estates are not countable. They also have the added feature of not being available for estate recovery upon the death of the Life Tenant. For this reason, life estates have been a popular, sometimes abused, method of holding title to real property.

As is the case with a tenancy-in-common interest, there may be a Transfer Penalty when the life estate is set up and the Remainder Interest is transferred to the Remainder Interest holder. This will be discussed further below under the Transfer Penalty discussion.

Real Property: Joint Tenancies

Joint tenancies in real property are somewhat similar to tenancies-in-common. As long as the joint tenancy exists, if a joint tenant dies, the surviving joint tenant or tenants take the deceased tenant's interests automatically (in this way, a joint tenancy is similar to a life estate). Because of that feature, joint tenancy property will escape estate recovery.

Historically there had been much confusion with respect to whether the joint tenancy interests had to be equal. Fortunately, recent legislation clarifies that joint tenancy interests need not be equal. Setting up a joint tenancy with one share being 99% and another being 1% would be as valid as setting up two 50% interests.

Various county DSS offices have historically treated joint tenancies the same as Tenancies-in-Common — namely, not countable assets. However, they are not the same. Further, joint tenancies are not mentioned in the North Carolina Adult Medicaid Manual, and because of that, some counties have begun to treat joint tenancies as countable assets. That is yet another reason that retaining knowledgeable counsel is a good idea when undertaking planning.

Personal Property: Household and Personal Effects

Household furnishings, clothing, jewelry and other personal effects used by an applicant and spouse as such are non-countable. For example, clothing and furniture regularly used by an applicant or spouse will not count; clothing and furniture in a storage area (perhaps from a discontinued business) will count.

Personal Property: Autos

One automobile used to transport the applicant or a spouse is noncountable. The DHB manual instructs the caseworker to assume that is the case unless there is evidence to the contrary. If the applicant and a spouse own more than one automobile, then the most valuable auto does not count, but other autos will be countable.

Personal Property: Insurance

For purposes of Medicaid, two types of insurance are relevant: One type has no cash value or buildup (commonly called "term insurance"), the other type does have some sort of cash value or buildup (and comes under a variety of headings such as "whole" or "universal" or "variable" . . . the cash value is what is important for Medicaid purposes).

Examine all life insurance policies. Do not count term insurance. If the total face value of any sort of "cash buildup" insurance is $10,000 or more, the total cash value of those policies is countable. Again, term insurance does not count.

Example: Maude owns two whole life policies, and a term life insurance policy with a face value of $20,000. One whole life policy has a face value of $7,000 and a cash value of $500; the other has a face value of $4,000 and a cash value of $2,500. The *face value* of the whole life policies exceed $10,000, so the total *cash value* of $3,000 is countable. Again, the term insurance does not count.

Instead, say Maude owns a $7,000 face value policy with a cash value of $6,000 and a $2,500 policy with a cash value of $2,000. Because the face values total less than $10,000, the $8,000 total cash values will not count.

Strategy: A large countable IRA will cause tax misery by cashing it in to spend it down. If Dad is in the nursing home and Mom has a large IRA, don't cash it in . . . Convert it to a tax-qualified annuity that will pay a fixed amount to Mom. Noncountable! But it has to be done right.

Similarly, a large pile of cash can be converted to an annuity that is not tax qualified. In effect, a big countable asset is turned into an income stream . . . And if it is for the Community Spouse it may not matter much. *See* the discussion of income further below.

Personal Property: Retirement Plans/IRAs

Retirement plans and IRAs that can be distributed in a lump sum are countable. The fact that accessing them may cause unpleasant tax consequences or surrender charges is irrelevant.

On the other hand, an IRA that is paying a fixed, irrevocable annuity stream may not count as an asset. *See* the discussion of annuities below.

Personal Property: Annuities

If an annuity purchased on or after November 1, 2007, is either revocable or assignable it is a countable resource.

If the annuity is not a countable resource (because it is irrevocable and nonassignable), then the annuity must be analyzed to determine whether a transfer penalty will apply.

Transfer penalties will be discussed in much greater detail below. For purposes of this brief discussion, however, an annuity purchased (or a preexisting annuity that has any changes made) on or after November 1, 2007, will not be subject to a transfer of assets sanction if the State is named as remainder beneficiary to the extent of Medicaid benefits paid (the State may take second place behind a spouse and a minor child) and the annuity is expected to pay out in level payments within the actuarial life expectancy of the annuitant.

Personal Property: Burial Contracts

Irrevocable burial contracts are not countable. Revocable contracts are countable. Note carefully, if an applicant does not have an irrevocable burial contract, $1,500 in otherwise countable resources may be earmarked for burial purposes and thus avoid classification as available resources.

Personal Property: Trusts

The Medicaid trust rules are extremely complex. Please do not rely upon this simple explanation for a definitive answer. Whether the assets in a trust are countable or not depends on the answers to a series of questions.

Question 1: Was the trust funded by the applicant or the applicant's spouse?

General Rule: If an applicant is the beneficiary of a trust funded with his assets or the assets his spouse, the trust will be countable to the applicant. A number of significant exceptions apply.

Exception 1: Was the trust funded by a spouse's will? If so, and if the trust was properly designed as a discretionary trust (meaning the trustee is not legally obligated to distribute anything at all to the beneficiary), the assets in the trust will not be countable.

Exception 2: If not funded by will, does the trust allow the trustee to distribute anything from any part of the trust under any conceivable circumstance? If the answer is "no" the trust is not countable. If the answer is "yes" with respect to any part of the trust, that part of the trust is countable.

A trust may have different parts. Part A or Part B. Perhaps parts for different beneficiaries. Importantly, most trusts have "income" and "principal." A trust may prohibit distributions of principal under any circumstances but allow or require distributions of income. The "principal" would not be "countable" and the income, of course, would be.

Really Important Note: If an applicant or her spouse sets up an "Exception 2" trust that prohibits any distributions to the applicant or the spouse, it may not be a countable asset, but the trust certainly will raise transfer of assets concerns when it is established, especially if the trust was set up within the last five years.

Exception 3: If the trust was funded with the applicant's own assets and the applicant is disabled and under age 65 at the time the trust is set up, then the trust might qualify as a "self-settled special needs trust."

Question 2: Was The Trust Funded By Someone Else?

If a trust is set up by someone other than the applicant or her spouse, will the assets be counted? Answer: *It depends!*

General Rule: If a trust set up by someone other than the applicant or her spouse *requires* the trustee to distribute assets under certain circumstances, the assets that are required to be distributed will be countable to the applicant if those circumstances occur.

Common Example: Mom sets up a trust for daughter that requires assets to be distributed for the "health, education and maintenance" of the daughter. The trusts assets will be countable if daughter needs to go into a nursing home.

Common Example: If the trust says my trustee may not distribute to daughter in any manner that would disqualify her for nursing home benefits under Medicaid, but may distribute for certain other reasons, the trust assets will not be counted. These types of trusts are commonly referred to as "third party special needs trusts."

TREATMENT OF ASSETS FOR A MARRIED COUPLE

Medicaid provides special protections for the spouse of a nursing home resident, known in the law as the "community" spouse. Under the general rule, the spouse of a married applicant is permitted to keep one-half of the couple's combined countable assets up to $137,400 (2022). In addition, there is a minimum resource allowance for the community spouse of $27,480 (also 2022). The protected amount is referred to as a "Community Spouse Resource Allowance" or "CSRA.”

The CSRA is calculated with respect to assets held by a married couple as of the beginning of the first continuous 30 consecutive day period that the applicant spouse has been confined to a hospital or nursing home or some combination of the two. For the sake of administrative convenience, DHB will actually measure the assets as of the close of the last business day of the preceding month. This is sometimes referred to as a "snapshot date.” It does not matter when the Snapshot Date occurred. It is not at all uncommon to have a Snapshot Date that was triggered several years before the date of a Medicaid application.

So, for example, if a couple owns $90,000 in countable assets on the date the applicant enters the hospital and stays in it or a nursing home for 30 days or more, he or she will be eligible for Medicaid once their assets have been reduced to a combined figure of $47,000 . . . $2,000 for the applicant and $45,000 (one-half of $90,000) for the at-home spouse. If the couple owned $300,000 in assets, the spouse in need of care would not become eligible until their savings were reduced to $139,400 ($2,000 for the nursing home spouse and the maximum $137,400 for the community spouse).

Often, it is advantageous for the couple to try to have as much money as possible in their names on the Snapshot Date up to $274,800 ($137,400 x 2) so that the amount the community spouse is allowed to keep will be as high as possible. Sadly, many couples believe they

understand the rules and spend half of their assets *before* a Snapshot Date only to later discover they must reduce their assets by half again!

After a determination has been made as to the nature and extent of an applicant's (and spouse's) assets, and whether any of those assets will be protected, the next major inquiry involves whether any assets have been transferred before the application.

This concludes the discussion of the classification of assets for Medicaid eligibility purposes. We now turn our attention to the much misunderstood (but very harsh) Medicaid transfer penalties.

THE TRANSFER PENALTY

The other major rule of Medicaid eligibility is the penalty for transferring assets. Medicaid has always imposed some sort of restriction on transferring assets before entering a Medicaid application - were it not for such restrictions, anyone could qualify for Medicaid simply by giving assets away at the time nursing home entry became necessary.

Medicaid restricts asset transfers by imposing a period of ineligibility for nursing home benefits called a Transfer Penalty. The idea is that the transferred assets could have been used to pay for nursing home care rather than having been gifted to others. Two concepts are always relevant with respect to a Transfer Penalty: (i) The length of the penalty in months, and (ii) The date the Transfer Penalty commences.

How The Rules Work

DSS reviews any transfer made within 60 months of the Medicaid application to determine if a Transfer Penalty (discussed below) should apply.

If an applicant (or his or her spouse) transferred assets more than 60 months before the date of the Medicaid application, the transfer is irrelevant.

If transfers were made within 60 months of the application and they were not exempt transfers (some are . . . see below) Transfer Sanctions will not begin to run until *both* of the following conditions have been met: (i) the applicant is in a nursing facility with a physician's formal approval and (ii) the applicant is otherwise financially qualified for Medicaid (other than the fact that there will be a Transfer Sanction).

The actual number of months of ineligibility is determined by dividing the amount transferred by $7,110 (2022).

Example: If an applicant made a transfer to another person or to a trust totaling $400,000 he or she would be ineligible for Medicaid for 56.26 months ($400,000 ÷ $7,110 = 56.26) beginning on the day the applicant is both in a nursing home and financially qualified for Medicaid (except for the Transfer Penalty). If the applicant applies for Medicaid 59 months after the transfer (within 60 months) he will be ineligible for Medicaid for 56.26 months commencing on the date of application. Another way to look at this is that for every $7,110 transferred, an applicant will be ineligible for nursing home Medicaid benefits for one month.

Change the facts. The applicant has $20,000 cash in the bank. To be eligible, he must have no more than $2,000 in countable assets. Four months later he has spent money and has $1,500 left. *Then (and only then) would the 56.26 month sanction begin to run.*

Remember, DSS may only consider transfers made during the 60 months preceding an application for Medicaid, the "look-back" period. Effectively, then, there is a 60 month cap on periods of ineligibility as long as no application is made within the 60 months.

There is no cap on the period of ineligibility. In the example above, if the transfer was made to trust or perhaps a child more than 60 months before the application, there will be no Transfer Penalty. If the transfer was made *within* 60 months of the application (say 59 months before the application), there will be a 56.26 month Transfer Penalty.

As a result of these rules there are two important considerations to keep in mind. Planning is tricky and should be undertaken only with expert guidance (there are available strategies). Also, if a nursing home stay becomes necessary and there are potential issues with earlier transfers, expert guidance also is essential to repair the situation and devise a strategy.

Warren Buffet gives $2 billion to his kids and applies for Medicaid 4 years, 11 months, and 20 days later (within 5 years). If Warren is other wise financially qualified, he will have a Medicaid transfer penalty of 281,293.95 months (that's $2 billion ÷ $7,110)!

If Warren waited just a few days more, until 5 years and a day after the transfer, and applied he would have qualified.

Warren got bad/no legal advice. If he had asked me first I would have advised either to wait a few days or buy the nursing home!

Transfer Penalties and Real Estate

If an applicant transfers real property to a noncountable trust or to another person, of course, there will be a Transfer Penalty.

If an applicant sets up a tendency-in-common, there will be a Transfer Penalty based on the value of the percentage transferred. This is why many people transfer a small percentage (perhaps 1%) to create a tendency-in-common.

When a life estate is set up, the Life Tenant usually transfers the Remainder Interest to another person. The value of the Remainder Interest can be calculated based upon the age of the Life Tenant (the percentage is provided in Social Security Administration tables). There will be a Transfer Penalty based on the value of the Remainder Interest transferred.

Occasionally it makes sense to use excess cash (countable) to purchase a noncountable Life Estate in real property. If the property is NOT residential property, and no more than fair market value is paid, there is no Transfer Penalty and the property will be protected from Estate Recovery (more on that below).

CAUTION: If funds are used to purchase a Life Estate in residential real property and the purchaser does not reside in that property for 12 consecutive months, the purchase will be deemed to be a sanctionable Transfer even if a fair market value was paid.

Exceptions to the Transfer Penalty

A Transfer Sanction will not apply if an applicant can prove "by the greater weight of the evidence" that the earlier transfer was made exclusively for reasons other than to qualify for Medicaid. Note that the burden will be on the applicant, who may or may not be in any position to go through a hearing process and may well need to engage an attorney for assistance.

Very important planning exceptions are available. Transferring assets to certain recipients will not trigger a period of Medicaid ineligibility. These exempt recipients include:

(1) A spouse (or anyone else for the spouse's benefit);

(2) A blind or disabled child;

(3) A trust for the benefit of a blind or disabled child; or

(4) A trust for the benefit of a disabled individual under age 65 (even for the benefit of the applicant under certain circumstances).

Special rules apply with respect to the transfer of a home. In addition to being able to make the transfers without penalty to one's spouse or blind or disabled child, or into trust for other disabled beneficiaries, the applicant may freely transfer his or her home to:

(1) A child under age 21;

(2) A sibling who has lived in the home during the year preceding the applicant's institutionalization and who already holds an equity interest in the home; or

(3) A "caretaker child," who is defined as a child of the applicant who lived in the house for at least two years prior to the applicant's institutionalization and who during that period provided such care that the applicant did not need to move to a nursing home.

As mentioned above, a transfer can be cured by the return of the transferred asset in its entirety. That may not be pleasant . . . but it is a way to fix the problem.

Hardship Exception to Transfer Sanction

The General Assembly enacted “hardship rules” that would allow qualification of a person for Medicaid and allow a Community Spouse to retain a certain level of assets even if DSS imposes a transfer sanction on an earlier transfer.

The adopted Hardship Rule allows a Community Spouse to retain the previously protected income (see “TREATMENT OF INCOME” below), up to 60% of CSRA discussed above, and a homeplace with equity of less than $500,000 . . . and still qualify for a finding of Hardship if other hardship conditions are met.

The Hardship Exception to the imposition of Transfer Sanctions should *not* be viewed as a pre-application planning opportunity. In other words, do not plan on transferring assets in excess of the Hardship levels outlined above and plan to argue “hardship.” It would flaunt the spirit of the hardship rules (that they be reserved for unintentional cases of hardship) and would incur the wrath of legislators who had made an effort to provides some relief.

TREATMENT OF INCOME

The income eligibility rules are convoluted, but in summary, if the applicant's income is in excess of the facility's private pay rate, the applicant will not be eligible for Medicaid.

When a nursing home resident becomes eligible for Medicaid, all of his or her income, less certain deductions, must be paid to the nursing home. The deductions include a $30-a-month personal needs allowance, a deduction for any uncovered medical costs (including medical insurance and Medicare supplemental plan premiums), and, in the case of a married applicant, an allowance he or she must pay to the spouse that continues to live at home.

As will be discussed a bit more below, Medicaid considers only the income of the applicant and *not* that of the community spouse (the spouse not being institutionalized). Medicaid uses a "name on the check" rule in determining income.

Spousal Income

In all circumstances, the income of the community spouse will continue undisturbed; he or she will not have to use his or her income to support the nursing home spouse receiving Medicaid benefits.

In some cases, the community spouse is also entitled to share in all or a portion of the monthly income of the nursing home spouse. DHB determines an income floor for the community spouse, known as the minimum monthly maintenance needs allowance, or MMMNA. If the community spouse's own income falls below his or her MMMNA, the shortfall can be made up from the nursing home spouse's income. The NC MMMNA is $2,178 (7/2021).

Also, an additional allowance can be made from the nursing home spouse's income for every dollar that certain housing costs such as taxes, mortgages and insurance exceed $653 (up to a maximum of $1,082 in shelter costs over $653) (2021, good until July, 2022). In other words, a Community Spouse with high shelter costs could retain as much as $3,260 monthly income.

LIENS AND ESTATE RECOVERY

The state has the right to recover whatever benefits it paid for the care of the Medicaid recipient from his or her probate estate. Given the rules for Medicaid eligibility, the only property of substantial value that a Medicaid recipient is likely to own at death is his or her home. Under current law, the state may make a claim against the decedent's home only if it is in his or her probate estate.

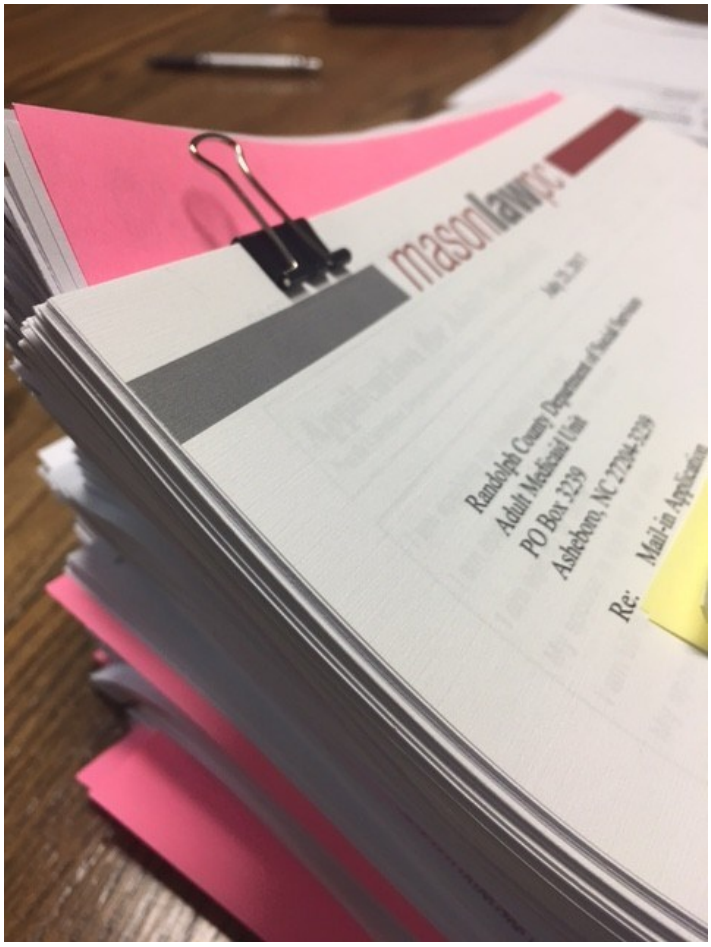
Property that is jointly owned with rights of survivorship, in a life estate, or in certain trusts, is not included in the probate estate and thus escapes estate recovery. Congress has given the states the right to seek estate recovery against such nonprobate property; so far, North Carolina has not acted on this provision.

Contrary to popular belief, there is no such a thing as a Medicaid or "nursing home" lien in North Carolina. Upon the death of a Medicaid recipient, and providing no exception to estate recovery applies (see below), DHB is a fifth class creditor against the probate estate of the deceased recipient – DHB "gets in line" with other creditors of equal rank.

The law also provides exceptions to estate recovery when hardship can be proven. This is extremely difficult to prove.

Currently, there is no estate recovery if there is a surviving spouse or if there is a surviving child determined to be disabled by Social Security Administration.

THE MEDICAID APPLICATION



Applying for Medicaid is cumbersome and tedious. Every fact asserted in the application must be verified by documentation.

The application process can drag on for some time as the local DSS demands more and more verifications regarding such issues as the amount of assets and dates of transfers. If the applicant does not comply with these requests and deadlines on a timely basis, DSS will deny the application.

CAUTION: Beginning in 2018, many County DSS offices began to request FIVE years of bank and other financial records. We suggest you begin to assemble and maintain this information if there is any chance of a Medicaid application in the foreseeable future.

Under federal law, and North Carolina follows this carefully, a Medicaid application decision must be rendered within 45 days of receipt. As the 45 day deadline nears, the applicant had best *promptly* comply with information requests to avoid a denial.

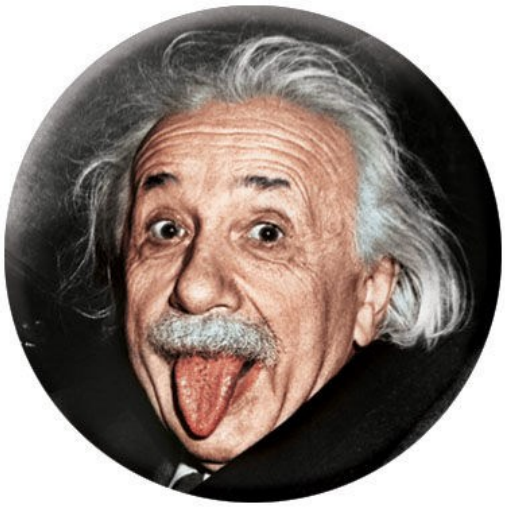
Medicaid will pay benefits retroactively to the date of the application if the applicant remains qualified during the application period.

In addition, after Medicaid eligibility is achieved, it must be redetermined every six months. This is usually a fairly simple mail-in form providing an opportunity to report any changed circumstances.

SUMMARY

As you can see, the Medicaid rules are exceedingly complex and are becoming harsher. Nevertheless, many worthwhile planning opportunities exist that this booklet cannot explore in detail. You should seek competent legal assistance. This booklet is a beginning. A good one!

Between a ROCK . . . and a HARD PLACE?
We can help!



"You have to learn the rules of the game. And then you have to play better than anyone else."

— Albert Einstein

"If you can't explain it simply, you don't understand it well enough."

— *ALSO* Albert Einstein

Great Information. You do an outstanding job.

— AEP

Good job! Also, entertaining the way you have it written. If folks only knew what pitfalls are out there!

— WC

Thanks for this information. It is so complicated. Keep up the good work!

— LR

Valuable timely information. It is never too early to plan.

— NH

Thanks for the education. I'm working to help my father in law who is currently in a nursing home and under Medicaid after using up most of his life savings. I like your thoughts and my real concern comes when individuals have no family to act in their best interests. They do not know enough to have someone like yourself help early enough to make a difference or advise them of the right options. Attorneys can sometimes get a bad rap but my experience with elder care attorneys is almost ministerial. Best wishes.

— BC

Robert A. Mason, JD, CELA, CAP is owner of Mason Law, PC, with offices in Charlotte and Asheboro, North Carolina.

Bob is a Certified Elder Law Attorney by the National Elder Law Foundation, is a North Carolina Board Certified Specialist in Elder Law, is past chairman of the North Carolina Board of Legal Specialization, a fellow of the American College of Trust and Estate Counsel (ACTEC), past Chairman of the Elder Law Section of the North Carolina Bar Association (two terms), past Chairman of Hospice of Randolph County, North Carolina, and a frequent speaker on elder and disabilities law issues. Bob is also a member of the National Academy of Elder Law Attorneys' Council of Advanced Practitioners (an invitation-only group of less than 100 of the nation's senior elder law attorneys).

"Super Lawyers" magazine (an annual edition of *Charlotte* magazine) has named Bob a North Carolina 'Super Lawyer' multiple years. Bob is also listed in Best Lawyers in America© in the category of "Elder Law." Bob is also an active member of the National Academy of Elder Law Attorneys, as well as the Georgia State Bar. For many years the lawyer peer review rating service of Martindale-Hubbell has listed Bob as "**AV® Peer Review Rating** — An AV rating is a significant accomplishment - a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence. A lawyer must be admitted to the bar for 10 years or more to receive an AV rating."

With well over 30 years of legal experience, Bob has a Bachelor of Science in Communications from Northwestern University, Evanston, Illinois, and a Juris Doctor *cum laude* from Mercer University School of Law, Macon, Georgia.

The Mason Law, PC website, with contact information, may be found at www.masonlawpc.com . . . or call 704-276-6446 (Charlotte) or 336-610-6000 (Asheboro). Bob is seeing clients in either office.