

The background of the page features a light purple overlay with various medical and healthcare icons. These include a hospital building, a DNA double helix, a stethoscope, a medical truck, and a person in a wheelchair. The icons are arranged in a somewhat abstract, overlapping pattern.

# ***Why the 1% Should Care About Medicaid***

By Stanley P. Jaskiewicz

**E**ven before today's political discord, the gulf between typical business law clients and the world of Medicaid recipients seemed as wide as the chasm between Lazarus and the rich man in the well-known Biblical parable ([https://en.wikipedia.org/wiki/Rich\\_man\\_and\\_Lazarus](https://en.wikipedia.org/wiki/Rich_man_and_Lazarus)). In fact, today, the very concept of Medicaid seems constantly under attack by our elected officials.

So why should the proverbial 1% reading this article (by a corporate attorney, no less) care about public benefits?

Because we are all aging—along with our relatives—and residential health care options aren't getting any less expensive.

In addition, I suspect that few attorneys have seen the “benefits” of Medicaid first-hand, particularly those who do not regularly represent the indigent.

Yet relatives who know that you are an attorney may naturally expect you to help with the reams of paperwork required to qualify for Medicaid's “Long Term Care, Supports and Services” benefits—ignoring that you may have never previously seen a Medical Assistance (Medicaid) Financial Eligibility Application form for such benefits, much less submitted one. ([http://www.dhs.pa.gov/cs/groups/webcontent/documents/form/s\\_002632.pdf](http://www.dhs.pa.gov/cs/groups/webcontent/documents/form/s_002632.pdf))



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Although I practice business law, I have helped two relatives qualify for Medicaid benefits:

- My son with a developmental disability has received “wraparound benefits”—similar to Medicaid—since he was initially diagnosed with autism in 2001.
- I applied for Medicaid for my elderly mother-in-law, who entered a nursing home in late 2014.

From those experiences, let me offer suggestions on what you can do now, in advance, to ease the process of obtaining public benefits—including critical steps I wish that I, or my in-laws, had taken years ago.

I also hope that this article points out some benefits that may

be available but which you (or your relatives) may not even know about.

#### **1. START WITH LOVE.**

Before turning to the nitty-gritty details of the application forms, let me begin with the most important point I can make for those helping a relative, especially your own child.

You will almost certainly get aggravated during the process by the repetitive paperwork. However, remember that you should always begin with love, regardless of why you are doing the application.

In our case, I was stressed that my in-laws did not have the



financial records I expected them to have, and that what they had was in shambles, with little organization.

Similarly, don't blame family members for not having anticipated what Medicaid will need from them. No one plans to be ill and indigent, and certainly no one chooses to rely upon Medicaid.

(In our case, we had to use Medicaid because the generous private health insurance provided to a widow of a federal employee did not cover her residential care beyond the limited time necessary for rehabilitation in a nursing home setting following her injury.)

## 2. WORK THE PROBLEM.

While attorneys are used to managing reams (literally) of records, most people are not.

Yet, the documentation required for even a simple application can be extensive. In our case, we had to provide several years' worth of records from about 18 accounts in eight banks.

From that process, I learned that everyone is under stress when supporting a family member in need. Although my wife and I had to deal with the paperwork, we weren't supporting an ill mother-in-law every day in a residence not equipped for such support. We also weren't doing her laundry, or visiting her in the home each day.

In other words, aggravation and frustration as a reaction to the hassles of the Medicaid application process are *never* a reason to turn against anyone, much less a family member.

Instead, I recommend the approach of the calm mission controller in the award-winning movie, *Apollo 13*: "Let's work the problem people. Let's not make things worse by guessing."

In other words, no matter how frustrated you may get with relatives, or the bureaucracy, focus only on completion of the application—gripping about the process just wastes time and, more importantly, your own psychic energy.

Also, remember that relatives living with a person in need may not want to fight or be as aggressive as you, as an attorney,

may prefer. But their reluctance to fight doesn't mean that they don't care.

You don't walk in their shoes every day, and your opinion as counsel may matter far less than their day-to-day reality of struggling to provide care and remain employed.

In my son's case, my wife's maternal instincts to care for our son, especially when he was young and had behavioral issues, included much less of the "tough love" than what I thought appropriate.

In retrospect, however, I think her attention to his emotional needs mattered far more in the long run than any disciplinary lesson I may have felt he needed at a particular time.

## 3. APPROACH THE APPLICATION LIKE A BUSINESS MATTER.

I cannot overemphasize the benefits of using lessons I have learned from my business law practice to navigate government bureaucracies.

For example, I felt that the constantly changing cast of Medicaid employees who reviewed our applications became much more helpful because we tried to make their lives easier by carefully organizing the application materials (as I would typically do in any business matter).

I also think that they were not used to applicants who promptly responded to their requests.

(One official reviewing our application even went out of his way to try to find tax relief for my mother-in-law.)

## 4. KEEP YOUR EYE ON THE PRIZE.

Remember that you and your family members are "in it for the long haul." A Medicaid application is not a "one and done" process.

Instead, you must submit annual renewal applications with copies of all supporting information (such as bank statements, income records, and the like). A resentful attitude could harm your loved one for many years to come—and it certainly won't lead to help from the bureaucracy.

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# Medicaid

Medicaid (Medicaid.gov) provides health coverage, including doctor visits, hospital costs, and long-term nursing home care to eligible low-income adults, children, pregnant women, elderly adults, and people with disabilities. Pennsylvania's eligibility requirements depend on a measure of income, based on the federal poverty level, and the applicant's status (<https://www.medicaid.gov/medicaid/by-state/stateprofile.html?state=pennsylvania>). Medicaid is administered by states, according to federal requirements, and is funded jointly by states and the federal government. In Pennsylvania, Medicaid programs are administered by the Department of Human Services (<http://www.dhs.pa.gov/citizens/healthcaremedicalassistance/>).



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#### **5. REPORT CHANGES PROMPTLY.**

As an attorney, I regularly update regulators when critical changes occur. But non-attorneys may not realize they have that same obligation—until a regulator threatens to cancel a family member's benefits because of a perception that assets acquired after submission of the initial application were not fully disclosed.

Such changes can include unexpected income, new assets (such as a tax refund), or gifts received from family members.

#### **6. CHANGE YOUR WAY OF THINKING.**

You should advise everyone in the family of the “do's and don'ts of Medicaid.” A cash gift to the beneficiary may seem loving and well-intentioned, but it may instead just trigger additional reporting requirements, and possibly even an inquiry into whether future additional gifts must be included as a source of income.

Even worse, the gift probably won't help the recipient. The funds may have to be turned over to Medicaid, or could even disqualify the recipient from Medicaid eligibility.

Many families may have saved for years to provide for their loved ones but will become uncomfortable about “spending it down” to meet Medicaid's asset limits.

Similarly, don't assume that your family members can continue to do things in a certain way just because that is how they have always done them. Informal sharing of resources among family members can raise concern about Medicaid fraud.

Even worse, Medicaid can treat a pattern of gifts as a resource, which Medicaid then expects will continue.

Finally, be sure to change property titles promptly after deaths in the family. Assets beneficially held by the applicant, such as undistributed estate funds, can be considered available to Medicaid, even if that was not the deceased donor's intent.

#### **7. DON'T BE AFRAID TO GET HELP.**

Consider consulting with specialized counsel in elder law or public benefits. The complexity of the rules of those specialties matches any business laws I have seen in my practice.

The elder law attorney we retained made possible the principal accomplishment from our work: preserving ownership of the home in which my wife and her sister were raised under the so-called “caregiver exception” to Medicaid's spend-down requirement.

In addition, the Pennsylvania Health Law Project (<http://www.phlp.org/>) attorneys with whom we spoke were extremely familiar with the practicalities of Medicaid.

#### **8. DON'T HIDE FACTS.**

Non-lawyers may not want to disclose facts they find uncomfortable or which they expect will hurt the application.

However, I had a duty of candor to reveal information that was contrary to my family members' interests.

For example, there may be assets that Medicaid would not likely find, or which would be harmful to the benefits claim.

As an attorney, however, I thought it far more important (and ethically required) to disclose that information, and to preserve the integrity of our relationship with the administrator.

#### **9. WHAT GOES AROUND, COMES AROUND.**

Anyone who regularly has contact with the same attorneys or firms knows that being rude or obnoxious won't be forgotten.

The same rule applies to your dealings with bureaucrats. No matter how exasperated you may be with a particular rule or decision, the bureaucrat will make decisions affecting your loved one for a long time, and those decisions are rarely black and white.

It never hurts to be civil to everyone with whom you have contact.

#### **10. YOUR FAMILY IS NOT A LAW FIRM.**

Remember that your family of non-lawyers may not understand basic legal duties that you consider obvious, such as:

- Recordkeeping.
- Conflicts of interest.
- Fiduciary duties.
- Veil piercing.
- Separation of accounts and separation of interests of related parties.
- Candor to the tribunal (i.e., Medicaid administrators).

Therefore, I encourage early and careful explanation to family members, not only of the Medicaid rules, but also of times that they should, or must, call you to ask for help.

#### **FINALLY, REMEMBER THE BIG PICTURE.**

Typical Medicaid applicants must deal with all of this aggravation without the resources that you, as an attorney, can provide your family.

Not only may you have access to the clerical resources needed to assemble the application package, but the pages upon pages of rules and instructions are not likely to intimidate you.

To the extent that anyone applying for Medicaid can be considered “fortunate,” your relative is lucky to have your help. You should be thankful for the opportunity to provide it. ■

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