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common sense information *for you*

Medicaid Qualification

Being able to save enough money for nursing home care is a practical impossibility for many older people and may make reliance on Medicaid necessary. Planning for Medicaid qualification involves difficult decisions having complex property and tax law implications. Moreover, the rules often change. However, planning opportunities do exist and early planning is essential to maximize the options available to you. The following are some of the steps that can be done to allow Medicaid qualification:

1. A Durable Power of Attorney is a document in which you give an agent authority to handle your affairs in the event you become incapacitated. It can be an extremely effective Medicaid planning tool if it contains a provision allowing the agent to make divestment transfers (including gifts to your spouse) that will enable you to qualify for Medicaid.

2. Transferring assets to qualify for Medicaid may be appropriate for some individuals as long as you retain sufficient assets to pay for nursing home costs until the ineligibility period caused by divestment ends. In the case of a husband and wife, transferring the home and other excluded assets to the community spouse is permitted under Medicaid rules. Such a transfer may protect the community spouse from

the reach of an estate recovery program, which could be implemented in the future.

3. Purchasing needed excluded assets such as home improvements, a car, personal items, household goods, a prepaid irrevocable funeral contract, or funeral insurance can be considered. Similarly, mortgages, land contracts, loans, and property taxes can be prepaid.

4. Reviewing or updating the community spouse's estate planning documents including a new will and/or trust is advisable. The community spouse should avoid giving the assets directly to the spouse receiving Medicaid. Assets can be given by the community spouse during lifetime to a trust to avoid probate and cut off the inheritance rights of the spouse living in the nursing home.



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Sources

State Bar of Michigan
<http://www.michbar.org>

Attorney General of
the State of Michigan
<http://www.michigan.gov/ag>

National Domestic Violence Hot-
line: 1-800-799-SAFE (7233).

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The Freedom of Information Act

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all “public bodies” in the state.

Coverage: All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered.

Public Records Open to Disclosure: In general, all records except those specifically cited as exceptions are covered by the Freedom of Information Act. The records covered include minutes of open meetings, officials’ voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules or policies, including, but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered.

Availability of Public Records: A request must be made in writing and provided to the FOIA coordinator of the public body. A FOIA coordinator may designate another individual to act on his or her behalf to accept requests for processing. A person may ask to inspect, copy or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request. However, prisoners in state, county or federal correctional facilities are not entitled to make requests. Not more than 5 business days after receiving a request, the public body must respond to a request for a public record. The public agency can notify the requester in writing and extend the time for an additional 10 business days.

Fees for Public Records: A government agency may charge a fee for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. A public body may also charge for search, examination and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee

Enforcement: A person may appeal a final decision to deny a request to the head of the public body. The head of the public body has 10 days to respond to the appeal. Under unusual circumstances, an additional 10 days may be taken. A person also has the right to commence an action in circuit court to compel disclosure of public records. The suit must be filed within 180 days after the public



must be limited to actual duplication, mailing and labor costs.

Denial of a Record: If a request for a record is denied, written notice of the denial must be provided to the requester within 5 business days, or within 15 business days if an extension is taken. A failure to respond at all constitutes a denial. When a request is denied, the public body must provide the requester with a full explanation of the reasons for the denial and the requester’s right to submit an appeal to the head of the public body or to seek judicial review. Notification of the right to judicial review must include notification of the right to receive attorney fees and collect damages.

body’s final decision to deny a request. The action may be brought in the county where the requester lives, the county where the requester does business, the county where the public document is located, or a county where the agency has an office.

Penalties for Violation of the Act: If the circuit court finds that the public body has arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, award punitive damages of \$500 to the person seeking the right to inspect or receive a copy of a public record.

Is Mediation Right for a Domestic Relations Case?



In *mediation*, a neutral person (a “mediator”) helps parties work together to settle a dispute. The mediator helps the parties clarify their differences and find a resolution. Unless both parties ask the mediator to recommend a resolution (a process called “evaluative” mediation), the mediator does not tell the parties what to do. If the parties cannot reach an agreement on their own, the mediation will end without one. If the parties do reach agreement, however, the mediator helps them write it down. This agreement becomes a binding contract that a court will enforce.

Mediation may have advantages over traditional litigation:

- It may cost less and proceed more quickly.
- The parties may be more likely to abide by an agreement they have drafted themselves.
- The parties’ agreement is private.

Despite these advantages, professionals who work with survivors of domestic abuse agree that *mediation is usually not safe or workable when one of the parties has abused the other*:

- The face-to-face meetings typically required for mediation may put a domestic abuse survivor in physical danger, or provide the perpetrator an opportunity to harass or threaten the survivor.
- Mediation will not produce a fair agreement unless parties with equal bargaining power cooperate with each other. This is not possible when someone is using abuse as a means of control.

If a court orders a case to mediation, a party who feels unsafe can file a “Motion to Remove Case from Mediation” and serve it on the other party within 14 days of receiving the mediation order. The court must hold a hearing on the motion before the case is mediated. Reasons a court may exempt a case from mediation include:

- The parties are subject to a personal protection order.
- There is child abuse or neglect, or a party is involved in a child abuse or neglect proceeding.
- There is domestic abuse and a party will not have a lawyer present during mediation.
- A party cannot negotiate alone, and will not have a lawyer present during mediation.
- A party has reason to believe that his or her health or safety would be endangered.

Domestic abuse is a pattern of behavior used to control an intimate partner. This behavior may include physical and sexual violence, threats, financial abuse, or psychological abuse. Are you afraid of the other party? Has the other party physically hurt or threatened you, your children, your family members, your friends, or your pets? Have you been threatened with a weapon, hit, kicked, slapped, pushed, strangled, or bitten?

Have you been forced or pressured to have sex against your will? If the answer to any of these questions is “yes,” you may want to approach mediation with caution. Talk with your attorney, or with an advocate at a local program offering confidential support services to survivors of domestic abuse. For the number of the program nearest you, call:

National Domestic Violence Hotline 1-800-799-SAFE (7233).

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Adversary system — The trial methods used in the U.S. and some other countries, based on the belief that truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries, under established rules of procedure before an impartial judge and/or jury.

Bailiff — A court attendant who keeps order and is responsible for the custody of the jury.

Bind over — To hold for trial, a finding at a preliminary hearing that sufficient evidence exists to require a trial on the charges made against the defendant.

Change of venue — The removal of a suit started in one county or district to another location for trial, usually on the ground that one of the parties cannot obtain a fair trial in the original county or district.

Common law — Law which derives its authority solely from ancient usage and customs and from the judg-

“*A Laypersons Guide To Legal Terms*” is available from the State Bar of Michigan’s Programs and Services Division 517-346-6322. The publication is available for \$2.25 including shipping.

ments and decrees of courts which recognize and enforce such usage and customs — as distinguished from statutory law.

Declaratory judgment — A judgment of a court determining the rights of the parties or giving the court’s opinion on a legal point, without ordering that anything be done. A declaratory judgement is usually requested before the happening of (and in order to prevent) any specific act which could result in a claim for damages.

Escrow (es’krō) — A writing, deed, fund or object delivered by one person to another to be held until specified acts are performed or certain conditions are met, and then to be disposed of as directed under the terms of the escrow.

Referee — A person to whom the court refers a pending case to take testimony, hear the parties and report back to the court. A referee is an officer with judicial powers and serves as an arm of the court.

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