

Holistic Medicaid Planning

By Robert Mannor and Jennifer Ackroyd-Fabris

Edith and Bud married 55 years ago and have four grown children. Edith struggles with short-term memory loss and occasional falls but is otherwise physically healthy. According to their kids, Bud is the “unhealthy one,” but, between the two of them, they are mostly self-sufficient.

After Bud suffers a stroke, his mobility is severely limited. The effects leave Bud, at least temporarily, unable to live at home. He requires skilled nursing care, probably for more than 100 days. Edith and her children go to an elder law attorney’s office after they applied for, but were denied, Medicaid coverage. The nursing home had provided the forms to Edith to apply for coverage, but did not take into account that Edith and Bud have a life insurance policy on Bud with an \$18,000 cash value and a bank account with \$27,000, causing the denial. As a result, the family is now panicking because the average cost of a nursing home is \$94,404 a year¹ and Medicare covers only the first 100 days (the first 20 in full and then partial payments for an additional 80 if the patient qualifies). The all-too-common story of Edith and Bud can be financially and emotionally devastating.

The elder care journey

According to the U.S. Department of Health and Human Services, 40 percent of baby boomers are projected to eventually require nursing home care.² Given the cost, Medicaid is by far the largest source for nursing home financing.³ Between Medicare and Medicaid, 63 percent of all nursing home payments come from public benefits.⁴ Considerable thought needs to be put into Medicaid planning, and it is not appropriate in all circumstances. Given Bud and Edith’s assets, it would be possible—and relatively simple—to qualify Bud for Medicaid. However, that is not the case for every nursing home resident.

Moreover, Medicaid planning is an integral part of long-term care planning but should not be the sole focus. Simply getting Medicaid approved for Bud will not significantly help him and his family in the long run. The focus should include returning Bud home, keeping him and Edith in their own home, providing them both with better medical care and smoother transitions between different levels of care, and an efficient transfer of decision-making

to a designated agent for each of them, all while allowing them to maintain self-respect and as much independence as possible. If Edith comes to the attorney's office early in the elder care journey, the attorney will be able to advocate for and assist the family during every step—from the day of Bud's stroke to well after the deaths of both Bud and Edith.

Ideally, the family should consult with an attorney within the first day or two of Bud's hospital visit. It is critical to know if Bud has been admitted or if he is listed as "observation" status. If he is not admitted, Bud is not entitled to any rehabilitation covered by Medicare nor any assistance in finding an appropriate long-term care setting when leaving the hospital.⁵ The family may need advocacy to assure that Bud receives the proper admission status.

What about Edith? The children may temporarily focus their attention on caring for Bud while Edith is now living alone with memory problems and the risk of falling. Although not legal advice, the attorney should provide the family with information and options for temporary or respite care for Edith. If Edith's care is not part of the discussion and she falls or wanders away from the house, the family's legal issues become significantly more complicated.

When the hospital decides it is time to discharge Bud, the attorney may be needed to advocate for a longer stay, a full and adequate discharge plan, and appropriate placement in a rehabilitation or long-term care facility. Once Bud is in rehabilitation, the family may be told that he will need to leave when Medicare or insurance coverage ends. This usually is not accurate, but many nursing homes want a higher percentage of short-term rehabilitation patients and a smaller percentage of long-term patients. While the attorney may help the family explore other options, he or she may also need to intervene regarding the facility's claim that no long-term beds are available. Bud may also need to add or change his insurance coverage to a Medigap policy to maximize his coverage during rehabilitation.⁶ In theory, Medicare and proper insurance will pay for up to 100 days of rehabilitation, including the cost of the room. In practice, very few patients receive their full 100 days without good advocacy. For Bud, every additional day of therapy could greatly impact his future quality of life and options for care. The attorney can often maximize therapy by appealing to the Quality Improvement Organization or through other advocacy.⁷ Most facilities still apply an improvement standard for continuing therapy, but this is not proper under current law, and the attorney can insist on enforcement of the proper standard for continuing therapy.⁸

Once Medicaid is approved, what is next for the family? What are Edith's options for long-term care? If Bud improves enough to leave the nursing home, how will Medicaid eligibility be affected? Are there alternatives to Medicaid in a nursing facility? An attorney can help the family work toward reuniting Bud and Edith in an environment that meets their needs. Perhaps the appropriate long-term solution would be residing together in assisted living or an adult foster care home where their unique care concerns could be addressed. As Bud prepares to leave the nursing home, the attorney may advocate for continuing home care and ensure that a plan of care is signed by the physician before leaving the

facility. It is also important to make sure that the discharge from the skilled care facility is appropriate and voluntary. If not, the attorney may need to dispute and appeal the involuntary discharge. The attorney can assist the couple by advocating for Bud to transition into the community on the MI Choice Waiver program to help pay for home care, adult foster care, or assisted living. Another consideration for funding the couple's long-term care needs is veteran's benefits. If either Bud or Edith served in the military during a wartime period, a holistic attorney might help the family walk the tightrope of acquiring Medicaid for Bud while obtaining the improved pension benefit available to veterans to help reimburse the cost of Edith's long-term care.

A common problem after Medicaid approval is the death of the community spouse (in this example, Edith) before the death of the spouse on Medicaid, which transfers the deceased spouse's assets to the Medicaid spouse and disqualifies him or her from further benefits. Any Medicaid plan should include a review of the family's current estate plan and establishment of an appropriate strategy to avoid losing Medicaid benefits upon the death of the community spouse. A true long-term care plan should start long before the need for Medicaid eligibility. An attorney can help clients in the early stages by creating powers of attorney that allow the designated agent to make seamless transitions and the principal's wishes to be carried out while preserving independence as long as possible. Also, with Michigan's estate recovery legislation, the family may need legal assistance after the death of both parents.

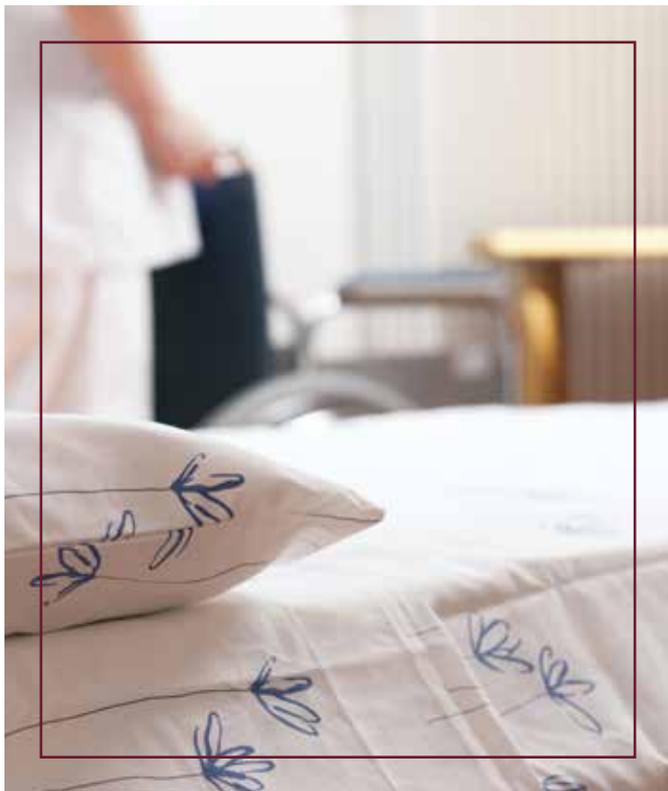
The story of Bud and Edith illustrates that a holistic Medicaid plan, with the help of a good elder law attorney, may ease the lives of older clients and their families. Not only does holistic planning comply with federal Medicaid rules, but it has also been acknowledged by at least one state's supreme court as being in the best interest of an incompetent person.⁹

FAST FACTS

Long-term care is frequently a woman's nightmare. If all of the couple's retirement savings are spent on the husband's care, when the wife needs care, she may be left with no resources other than Medicaid.

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Other considerations in holistic planning

The extent to which we, as a nation, contribute to the necessary care of a senior depends in large part on which disease the senior was unlucky enough to acquire. If a man on Medicare requires open-heart surgery or another expensive procedure, the bulk of the cost will be paid by Medicare. If that same man has Alzheimer's disease, Medicare covers very little of the long-term care costs, while the expense may be similar or more than for heart disease.

Also, long-term care is frequently a woman's nightmare. Because women live longer and are often the home caregivers for their husbands, the majority of nursing homes residents are women.¹⁰ Moreover, if the husband gets sick first, most of the couple's retirement savings are spent on his care needs. This is particularly true if the husband requires skilled nursing care and the wife fails to complete sufficient Medicaid planning. When the husband dies and the wife eventually needs care, she is left with no spouse, children who may be thousands of miles away, and often no resources other than Medicaid. For Edith and Bud, this becomes Edith's problem. In these situations, a holistic long-term care plan can be put in place before the assets are depleted, allowing both spouses to get the care they need when they need it. This will proactively address medical issues and allow the greatest opportunity for independence. A holistic plan would not merely consider the current healthcare needs of both spouses, but also include a plan for the future to allow the community spouse the same care options after the other spouse dies.

Conclusion

A holistic Medicaid plan requires advice and advocacy well before, during, and after the Medicaid application process. At times, a nursing home may be the most appropriate setting for a senior, but it need not be the final solution. The attorney's plan should include steps to maximize the client's care options; it is rare that a plan is narrowly focused on achieving Medicaid eligibility. Rather, it should incorporate Medicare, possible veteran's benefits, long-term care insurance, and appropriate care needs. In Edith and Bud's situation, the plan cannot be focused solely on Medicaid for Bud, but should be a road map to optimize a long-range plan to benefit both spouses.

If a client is able to receive the appropriate level of care when needed, an action plan can be enforced to allow the elder client to remain in the least restrictive environment and provide for a higher quality of life. ■



Robert Mannor is certified as an elder law attorney by the National Elder Law Foundation. He is the founder of the Michigan Estate Planning Law Center, PLLC, and has been a presenter for the Institute of Continuing Legal Education.



Jennifer Ackroyd-Fabris is supervising attorney at the Michigan Estate Planning Law Center and was a featured speaker at the 2014 Elder Advocacy and Law Boot Camp.

ENDNOTES

1. Michigan Department of Human Services, Bridges Eligibility Manual 405, available at <<http://www.mfia.state.mi.us/olmweb/ex/BP/Public/BEM/405.pdf>>. All websites cited in this article were accessed October 8, 2014.
2. Calmus, *The Long-Term Care Financing Crisis* (February 6, 2013) <http://www.heritage.org/research/reports/2013/02/the-long-term-care-financing-crisis#_ftn9>.
3. Kaiser Commission on Medicaid and the Uninsured, *Medicaid and Long-Term Care Services and Supports* (June 2012), available at <<http://kaiserfamilyfoundation.files.wordpress.com/2013/01/2186-09.pdf>>.
4. *Id.*
5. See Centers for Medicare and Medicaid Services, *Are You a Hospital Inpatient or Outpatient? If You Have Medicare—Ask!* (May 2014), p 4 <<http://www.Medicare.gov/Pubs/pdf/11435.pdf>>.
6. See generally Medicare.gov: The Official U.S. Government Site for Medicare <<http://www.medicare.gov/sign-up-change-plans/when-can-i-join-a-health-or-drug-plan/special-circumstances/join-plan-special-circumstances.html>>.
7. See Centers for Medicare and Medicaid Services, *Medicare Appeals* (May 2013), p 16, available at <<http://www.medicare.gov/Pubs/pdf/11525.pdf>>.
8. *Jimmo v Sebelius*, unpublished opinion and order of the U.S. District Court in Vermont, issued October 25, 2011 (Docket No. 5:11-CV-17).
9. See *In re Kerl*, 181 NJ 50; 853 A29 909 (2004).
10. See U.S. Department of Health and Human Resources, AHCP Research on Long-Term Care <<http://archive.ahrq.gov/research/longtrm1.htm>>.