

Overview of Medicaid Planning

The University of Texas School of Law
22nd Annual Estate Planning, Guardianship and Elder Law Conference
July 30-31, 2020 Moody Gardens, Galveston Texas

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I. INTRODUCTION

In any discussion of techniques for Medicaid planning the first issue that most authors will discuss is the need for such planning. There are many papers and scholarly articles that discuss whether or not Medicaid eligibility is the best way for any particular client to pay for their long-term care.¹ This article only addresses the mechanics of certain techniques that are used by elder law attorneys to protect assets for an individual or for a spouse and to qualify someone for Medicaid eligibility for long-term care. This paper does not cover the multitude of issues that must be considered in determining whether any of the techniques mentioned in this paper is a proper utilization of the clients assets and is in the best interest of the client.

Additionally, this paper only covers the specifics of the particular techniques to protect assets and does not address income issues to qualify the client for long-term care Medicaid in the State of Texas. This paper assumes that the reader has a reasonable knowledge of the basics of Medicaid eligibility as a discussion of the basics of each one of the areas implicated by the use of these techniques is not covered in this paper.

II. THE COOKIE JAR APPROACH

When discussing the various steps or mechanics of any technique to protect assets it is vital that the attorney understand every facet of the technique as well as the particular laws, regulations or Medicaid Eligibility Handbook sections that allow for that particular technique. Although it does not carry the force of law or federal regulation, the Medicaid Eligibility for the Elderly and People With Disabilities Handbook is the most practical resource to cite when dealing with an Eligibility Specialist for the long term care program. Because it is the best resource for explaining the actions of an applicant when questioned by an Eligibility Specialist, it is the principal source cited in this paper and hereinafter referred to as “the handbook.”²

It is also important to remember that these very sophisticated strategies must be explained to the client such that they cannot only understand the strategy but that they can take the necessary steps to implement a strategy. Your author has found after many years of advising clients about these techniques that it is very valuable to use analogies to explain planning strategies. One of the simplest strategies is to have the client liquidate non-exempt assets and purchase exempt assets or payoff debts that are secured by exempt assets. By placing the liquid assets of a client into an exempt asset or by using those liquid funds to purchase exempt assets, the issue of what is in the best interest of the client is not part of the equation. Because the client retains ownership of

¹For H. Clyde Farrell, *Keeping the Money or Giving It Away—Does Impoverishment Really 'Protect' the Client?* University of Texas School of Law Estate Planning, Guardianship and Elder Law Conference (2008).

² The URL for all of the handbooks published by the Texas Health and Human Services agency is <https://hhs.texas.gov/laws-regulations/handbooks>.

the assets, this technique allows the client to have continued access to their assets in the event they were to decide in the future to forego Medicaid eligibility and to use their assets to pay for long-term care. In other words, it is always preferable to maintain the assets of a client in the client's hands rather than to pursue a strategy that leads to the client losing ownership of assets.

When explaining this strategy to the client, your author refers to it as “the cookie jar approach.” Not every client will understand the intricacies of why they are allowed to keep certain assets but are not allowed to keep others but almost every client is familiar with the concept of putting some money into their cookie jar and holding it there so that they can take it out at a later date and spend it. The client will understand the idea that the money in the cookie jar belongs to them and they can do whatever they want with it. If they decide to take it out of the cookie jar and spend it, they can do so. If at anytime they change their mind and want to leave the facility, they will have the value of the cookie jar item, if they choose to liquidate it, to spend on living expenses or healthcare. It is their money to do with as they choose.

A. Homestead

Medicaid allows an applicant to own several cookie jars. Medicaid refers to these items as exempt assets. Normally, the largest cookie jar is a home and any improvements.

The following parts of this paper not only provide some specific techniques to protect certain assets of a client, it is meant to be illustrative of the multitude of possibilities that are available to a zealous advocate in helping a client reach their individual goals. All of the following strategies flow from a very simple policy in the handbook. The policy is that a single person (subject to value limits) or a married person is allowed to keep a homestead and qualify for long term care Medicaid.³

The term home and homestead are interchangeable terms. An applicant can protect an existing home as a cookie jar; or buy a new, more expensive, cookie jar; or fix up their current cookie jar; or buy a new cookie jar and fix it up. The handbook describes a home as a structure in which a person lives (including mobile homes, houseboats and motor homes), other buildings and all adjacent land. The home can be real or personal property, fixed or mobile, and located on land or water. Yes, a sailboat or other vessel can be claimed as a homestead. The value of the applicant's equity interest in the home cannot exceed \$595,000 (this dollar amount may increase from year to year based on the percentage increase in the consumer price index (CPI) for all urban consumers (all items; United States city average), rounded to the nearest \$1,000)⁴. If the applicant's

³ Medicaid Eligibility for the Elderly and People With Disabilities Handbook §F3000, Home.

⁴ Id. at § F-3000.

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First appeared as part of the conference materials for the
22nd Annual Estate Planning, Guardianship and Elder Law Conference session
"Overview of Medicaid Planning"