



FARRELL & JOHNSON PLLC

MEDICAID UPDATE

H. Clyde Farrell, Marilyn G. Miller, Meredith A. Sullivan

University of Texas School of Law

24th Annual Estate Planning, Guardianship and Elder Law Conference

August 4-5, 2022

Farrell & Johnson PLLC • 1000 Mopac Circle • Austin, Texas 78746 • p (512) 323-2977 • www.txelderlaw.com

This information is not legal advice and does not fit any particular person's factual situation. No attorney-client relationship is created by this document. This presentation is a summary only, it is incomplete and presents only a partial set of facts, strategies and law. If you seek legal or other professional advice on any topic addressed here, you must retain the service of a competent attorney.

1

Updates in "Extra Papers" (in your materials)

- Latest on Lady Bird Deeds & Transfer on Death Deeds: Julie Ezell-Perez, "Do a Good Deed"
- Getting Medicaid applications through: Benecia Flores, "Pesky Problems in Medicaid Cases"

Page 3



FARRELL & JOHNSON PLLC

2

You Can Deduct “Pre-Eligibility Medical Expenses” (PEME)!

- Policy Bulletin 22-07 (May 2, 2022): You can deduct Incurred Medical Expenses (IME) for the 3 months before the month of application, even if client was not yet eligible.
- Includes even nursing home expense (at the Medicaid rate)
- Examples: client was over resources or did not yet have a QIT
- Won't help if ineligibility was due to transfer penalty
- Applies to agency actions on or after June 1, 2022

Pages 3-5



FARRELL & JOHNSON PLLC

3

PEME Example

- \$10,000 owed to nursing home for pre-eligibility services
- \$2,000/month copayment
- For 5 months, client pays \$0 copayment, \$2,000/month to the facility
- Same as if client incurred a large dental bill while eligible

Page 4



FARRELL & JOHNSON PLLC

4

How to Implement PEME

- Complete Form H1263-A, get signed by client or representative and client's physician
- Obtain invoice from the facility for its services in the 3 months before application filing, at the Medicaid rate

After receiving notice re Medicaid Eligibility Date and copayment:

- Send Form H1263-A & invoice with letter to HHS requesting reduction of copayment

Pages 4-5



FARRELL & JOHNSON PLLC

Burt Case: HHS Requirement of Occupancy Upon Admission Struck Down

- *THHSC v Burt*: Couple bought a half interest in a home they had lived in previously and sold. HHS reasoned they could not have intent to “return” because were not living there upon admission to the facility
- Court: Same standard applies as when applicant resided in the home at time of admission: subjective intent to live there upon discharge, not considering age, physical condition, etc.

Pages 5-7



FARRELL & JOHNSON PLLC

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Medicaid Update

First appeared as part of the conference materials for the
24th Annual Estate Planning, Guardianship and Elder Law Conference session
"Medicaid Update"