

## **Staying Eligible for Medicaid after the Death of a Spouse**

When one member of a couple moves to a nursing home, we expect that spouse will be the first to die, but this isn't always the case. What happens if a Medicaid recipient's spouse dies first? If planning steps aren't taken, the death of a spouse can affect the nursing home resident's assets and eligibility for Medicaid. A Special Needs Trust for the spouse can protect costs.

In order to be eligible for Medicaid benefits a nursing home resident may have no more than \$1,500.00 in assets (the amount may be somewhat higher in some states). The Medicaid applicant's spouse (called the "community spouse") can keep more assets. In general, the community spouse may keep one-half of the couple's total "countable" assets up to a maximum of \$115,920, in Indiana in 2013. Often when one spouse seeks to qualify for Medicaid, he or she transfers assets to the community spouse.

The death of a Medicaid recipient's spouse can affect the amount of assets the Medicaid recipient has, and therefore his Medicaid eligibility. For example, suppose a community spouse dies, and her will leaves her estate to her husband, who is in a nursing home and receiving Medicaid. The additional assets will make the husband ineligible for Medicaid. Even if the community spouse's will did not leave anything to her husband, most states allow a spouse to claim a share of the estate. Medicaid can assess a penalty even if the husband does not claim his share. However, if the spouse had included a Special Needs Trust for the spouse in her Will, this would protect the assets from penalties.

The couple's house can also become a problem. Most spouses own property jointly. If the community spouse dies, the Medicaid recipient will own the house. Depending on the state, the nursing home resident may have to prove either an intention to return home or a likelihood of returning home in order for the house not to count as an asset. If the resident sells the house, the proceeds from the sale will make the resident ineligible for Medicaid. However, if the house is re-titled in the name of the spouse who continues to live there, with the proceeds flowing into the Special Needs Trust on their passing, this becomes a non-issue.

To prevent a community spouse's death from affecting the institutionalized spouse's Medicaid eligibility, it is important that the community spouse update his or her estate plan. There are many steps the community spouse can take to protect the spouse in the nursing home. To find out the plan that would work best for you, please contact our office.