Medicaid-Friendly Trusts

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on February 20, 2008.

A law which has been in effect since 1993 makes it possible for an individual whose income is over the Medicaid income cap to qualify for Medicaid. The phenomenon of the individual's income exceeding the Medicaid cap, but being insufficient to pay private nursing home rates, is sometimes called the "Utah Gap." Prior to enactment of the 1993 law, individuals in the "Utah Gap" did not qualify for Medicaid, and their families had to come up with funds necessary to pay the nursing home.

Texas is an "income-cap state," meaning that if monthly income exceeds the Medicaid cap ($1,911.00 in 2008), the individual is ineligible for Medicaid. The problem with the income cap is that it is much lower than the average monthly nursing home private rate (around $4,500). But the above-referenced law resolves this dilemma. The law provides for a device known as a qualifying income trust ("QIT") or "Miller Trust" (named for a Colorado court case involving a similar type trust).

Income that is directed to the QIT during the same calendar month in which it is received is not tested against the $1,911.00 income cap in determining Medicaid eligibility. The effect is to reduce "countable" income to an amount that is within the $1,911.00 income cap. However, all of the individual's monthly income, whether or not it is directed to the QIT, is considered in calculating the "applied income" (i.e., the individual's monthly co-payment toward the costs of nursing home care). So, the QIT only makes the individual income-eligible for Medicaid, but it does not affect his/her co-payment toward nursing home costs.

There are many requirements regarding the QIT. One is that the trust must contain a Medicaid payback provision. This means that when the individual dies, Medicaid gets what is left in the trust up to the total amount of medical care paid by Medicaid. In reality, however, there is often
little or nothing left for Medicaid to collect, because most amounts deposited to the trust get paid out as applied income to the nursing home and on other medical expenses.

So the QIT or Miller Trust makes an individual income-eligible for Medicaid and eliminates the tragedy of the "Utah Gap." But a caveat here is that this is only an income trust. Resources cannot be placed in a QIT, except for nominal amounts necessary to set up the account. Therefore, such a trust does not solve resource problems.

Fortunately, there are certain types of trusts that can be used to shelter resources. Some are third-party-settled, meaning that they are established using monies belonging to someone other than the Medicaid applicant (e.g., a parent or grandparent). This type of trust may be testamentary (it is written into a will) or inter vivos (it takes effect during the lifetime of the individual who establishes it). Other such trusts are self-settled supplemental needs trusts ("SNTs"), meaning that they are set up using the Medicaid applicant's own resources. These self-settled SNTs are for disabled individuals and must meet very specific criteria, including the Medicaid payback provision. But both types of trusts serve the purpose of providing for the individual's supplemental needs that enhance his/her quality of life, without providing basic support or interfering with Medicaid coverage.

The important point to remember is that Medicaid is an immensely complicated aspect of the law. Elder law attorneys are experts in this area and are very familiar with Medicaid-friendly trusts. They can help you preserve assets, while simultaneously allowing you or a loved one to access Medicaid.