When VA, Medicaid Rules Collide

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on November 11, 2009.

When planning for long-term care (LTC), one should remember that different public benefit programs have different rules.

Non-attorney planners sometimes manage to get an individual qualified for one program, while simultaneously disqualifying the individual for another. The individual needed both programs, and with competent planning could have qualified for both. Examples of such programs include benefits provided by the Department of Veterans Affairs (VA) and Medicaid.

VA and Medicaid are not mutually exclusive. In fact, the Medicaid program requires an individual potentially eligible for VA benefits apply for such benefits as a condition of Medicaid eligibility. Moreover, Medicaid does not count certain types of VA benefits as income when determining Medicaid eligibility.

When faced with LTC, many elderly veterans, or widows/widowers of veterans, are advised to apply for VA benefits. The VA provides non-service-connected disability pension benefits, plus aid and attendance benefits (for those needing help with activities of daily living) or housebound benefits to low-income veterans and their spouses, or to widows/widowers of veterans.

But the term "low-income" is misleading. While there is an income cap for such benefits, the VA subtracts from the individual's countable income un-reimbursed medical expenses, including assisted living and nursing home costs.

Thus, many veterans, or widows/widowers of veterans, who do not qualify for VA benefits while living at home will do so after entering an assisted-living or nursing facility. Previously, the VA had a limit on assets of $80,000, and this is no longer true. Now the VA looks at the individual's assets in relation to income, expenses, and life expectancy. In other words, are assets and income sufficient to meet the individual's lifetime needs?

Sometimes veterans, or their widows/widowers, planning for LTC are advised to give away all of their assets to their children in order to qualify for VA benefits to assist them with nursing home costs.

The individual follows this advice, and upon entering a nursing home does indeed qualify for VA benefits. The individual then applies for Medicaid to pay its share of the nursing home costs, and is surprised to learn that the Medicaid program assesses a penalty (i.e., a period of ineligibility) for giving away assets prior to applying for benefits, whereas the VA does not.

The individual cannot qualify for Medicaid at all during the penalty period, the length of which is based on the amount of assets that were given away. Therefore, the individual is left with only Social Security and VA benefits, which in most cases are not enough to cover nursing home costs.

Another situation is where the "planner" wants to profit from the sale of an annuity and advises the individual to spend down assets by buying an annuity, thus converting assets into an income stream. This is often the most undesirable method of qualifying for Medicaid. The annuity must name the state as the remainder beneficiary for the amount of care paid by Medicaid.

Therefore, the state, not the family, profits from any residual funds when the individual dies, not to mention that annuities provide a low return on one's investment.

There are much better ways of spending down, or sheltering, assets in such a way that the family, not the state, benefits and that preserve the assets in their original form. To avoid such a collision of rules, it is essential for anyone considering LTC to contact an experienced elder law attorney, who is not only familiar with the rules of all public benefit programs and who knows how these programs interface with one another.