The Medicare Catastrophic Coverage Act of 1988.

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Abstract- The Medicare Catastrophic Coverage Act of 1988 is discussed to illustrate the important new Medicaid provisions which were created to preserve the assets of the aged due to catastrophic illness, and to prevent complete spousal financial ruin.

The Medicare Catastrophic Coverage Act of 1988 (MCCA) expands the current Medicare Program to make it more comprehensive, although it still does not cover chronic care. It includes significant new Medicaid provisions which seem to provide substantial relief from spousal impoverishment and greater opportunities for preserving the assets of the elderly.

MCCA changes to Part A of Medicare, effective January 1, 1989, include hospital coverage for as many days as required with the payment of one annual deductible amount (between $564 and $580 in 1989) and coverage for up to 150 days per year of skilled nursing facility (SNF) care without the requirement of prior hospitalization and with copayments (about $20/day for 1989) required for only the first eight days of care. Under prior law, hospital benefits were limited to 90 days a year for each "spell of illness" plus a lifetime reserve of 60 days (which could only be used once) and 100 days of SNF care for posthospital recuperation. Beneficiaries were required to pay an in-patient hospital deductible ($540 in 1988) for each "spell of illness," as well as daily coinsurance charges for days 61-90 in a "spell of illness" ($135 in 1988), for the 60 lifetime reserve days ($270 in 1988), and for days 21 through 100 of SNF care.

MCCA also phases in coverage (generally beginning in 1991) for prescription drugs, subject to an annual deductible ($600 in 1991) and copayments (50% in 1990 and 1991, 40% in 1992, and 20% thereafter), and places a cap on charges for Part B Medicare benefits (which covers physician and medical equipment costs) so that beneficiaries will have to pay an annual deductible of $75 and coinsurance payments of 20% of the Medicare "reasonable" charges up to an indexed amount ($1,295 in 1990).

The costs of these changes will be borne primarily by the beneficiaries of the program (i.e., the elderly) through annual increases in the Part B monthly premium (i.e., an increase of at least $4/ month in 1989) and an income tax surcharge. For tax years beginning after December 31, 1988, individuals who are "Medicare eligible" for six or more months during the taxable year must pay an income tax surcharge ("supplemental premium") at an annual rate ($22.50 in 1989) for each $150 of federal income tax liability up to a maximum ($800 1989) for each Medicare eligible taxpayer. THe surcharge is not tax deductible, cannot be treated as an itemized medical deduction, and is considered a tax for estimated tax purposes (but not for purposes of any tax credits or the alternative minimum tax).

Under MCCA, a notice is required to be sent to all Medicare beneficiaries by January 31, 1989 explaining the new provisions as well as the limits of Medicare and Medicaid with regard to long term chronic care. In addition, companies that issue Medicare supplemental

policies ("Medigap policies") in effect on January 1, 1989 are required to provide a letter to their policy holders describing the provisions of MCCA and their effect on such policies and must provide a uniform 30-day free-look period during which such policies may be returned for a full refund.

As a result of the changes to Medicare, it seems likely that companies currently issuing Medigap policies will develop new policies covering long-term custodial care, which is still not covered by Medicare. Therefore, accountants and attorneys will now more than ever be asked to review such policies and must consider their use in estate planning for the elderly.

MCCA also contains important new Medicaid provisions. While the income and resource limits for Medicaid eligibility remain the same, the allocation of income and resources between the institutionalized spouse and the community spouse and the rules regarding transfers of assets, including homesteads, have changed significantly.

Currently, as a result of the Medicaid rules, both for determining eligibility and in the treatment of income after eligibility has been established, the community spouse may become impoverished before the institutionalized spouse can qualify for Medicaid. A needy community spouse can only receive income from the institutionalized spouse so as to bring his or her income up to welfare limits and must sue the institutionalized spouse in Family Court for additional support.

Effective September 30, 1989, the community spouse will be allowed to receive more income from his/her institutionalized spouse so as to bring his or her total monthly income up to a maximum of $1,500/month. Spouses in need of income above the $1,500 limit will be able to request a Fair Hearing and plead that "exceptional circumstances" have put them in significant financial distress. Additionally, spouses can still sue in Family Court for additional support.

Also effective September 30, 1989, all resources, other than the couple's house and all household goods and personal effects, belonging to the institutionalized spouse and the community spouse, whether individually or jointly owned, must be totaled for Medicaid eligibility purposes. Each spouse will be allocated one-half share of the total, and the community spouse will be allowed to retain his or her one-half share up to a maximum of $60,000 (referred to as the community spouse resource allowance), without affecting the institutionalized spouse's Medicaid eligibility.

Notwithstanding these resource provisions, though, Medicaid will still limit attribution or "deeming" of income and resources of the community spouse. If the community spouse refuses to turn over assets or income in excess of his or her resource allowance, Medicaid cannot deny coverage to the institutionalized spouse. However, Medicaid will continue to be able to bring suit in Family Court against the community spouse for contribution.

With respect to the transfer of assets, MCCA requires states to adopt laws making individuals ineligible to receive benefits for a specified period, if such individual transfers assets within 30 months of being institutionalized. Also, transfer of the homestead by the institutionalized spouse will no longer be treated as an exempt resource and thus subject the 30-month rule, except for a transfer to certain individuals including the community spouse and the institutionalized spouse's minor or disabled child. Thus, the restriction period for the transfer of assets has been increased from 24 months to 30 months, but only applies if the beneficiary receiving Medicaid is institutionalized. The period of ineligibility be the lesser of 30 months or the number of months determined by dividing the value of resources transferred by the average monthly cost of care in a nursing home. Transfers to the community spouse, though, are totally exempt from the 30-month rule as are transfers to the institutionalized spouse's disabled child.

These transfer provisions went into effect on July 1, 1988. However, as with the other Medicaid provisions of MCCA, it is unclear when New York will adopt the new federal rules

Division of Assets

(THE FEDERAL SPOUSAL IMPOVERISHMENT PROVISIONS)

The spousal impoverishment provisions of the Medicaid program permit a husband and wife to protect a portion or all of their combined income and resources when one of them requires long term care in an institutional or home-and community-based services setting. The amount protected is intended for the use of the person who remains at home. At the same time, these provisions help the spouse needing long term medical care to qualify for Medicaid benefits which can help in paying for that care.

In regards to **resources**, the amount of the couple's nonexempt resources owned which can be protected is the greater of:

- $17,856, or
- ½ of the value of the couple's nonexempt resources owned at the time the husband or wife first entered long term care, not to exceed $89,280.

Only nonexempt resources are considered. This would include such things as checking and savings accounts and land or buildings other than an exempted home. The protected resources must usually be transferred to the spouse in the community and are not considered in determining the eligibility of the person in long term care.

The $17,856/89,280 allowance limits are subject to change annually due to increases in the federal consumer price index.

In regards to **income**, the amount of the couple's combined income which can be protected is either:

- Up to $1,452 per month, or
- Up to $2,232 per month if there are excess shelter expenses.

In addition, up to $484 per month can be protected for each dependent family member who lives with the spouse who remains at home. A dependent family member is defined as a minor or adult child, a parent, or a brother or sister of either the husband or wife who has been dependent on the couple because of legal, financial, or medical reasons.

Only nonexempt income is considered. This includes income from such sources as Social Security, Veterans, Railroad Retirement benefits, wages, income from investments, and other public or private retirement or disability benefits. The protected income must be allocated each month to the spouse in the community and any dependent family members. The amount of this income is then exempted from consideration in determining the liability of the person in long term care for his or her cost of care.

The minimum income allowance standard is based on 150% of the federal poverty level. As such, it is subject to annual increases based on increases to the poverty level standards. The maximum allowance standard is subject to increases in the federal consumer price index and, therefore, also changes annually. The current $1,452 minimum level became effective May 1, 2001 and the $2,232 maximum limit became effective January 1, 2002. The dependent family member allowance is 1/3 of the minimum community spouse allowance.

The spousal impoverishment provisions are based on changes made to Medicaid statute in the Medicare Catastrophic Coverage Act of 1988. Although this Act was, for the most part, repealed by Congress that same year, the spousal impoverishment changes were retained. They went into effect May 1, 1988. Previous to that time, a state Division of Assets law was in effect which had been developed by the state legislature during the 1988 legislative session and went into effect May 1, 1988. The law was similar to the federal provisions in that it allowed for the same protection of a couple's income and resources although at a lower level. In addition, no provisions was made for dependent family members. The legislature later set aside the state law to permit the federal provisions to supersede that law on October 1, 1989. Since implementation of the original law, almost 5,000 divisions have been approved.

EXAMPLE

Application is taken on a 67 year old man who just entered a nursing home. He receives $1000/month in Social Security benefits and his wife, who remains at home, receives $500/month Social Security. The couple jointly owns a home, car, $40,000 C.D., and a checking account with a $200 balance.

Resource Determination

The home and car are exempt as resources and are not counted. The remaining countable resources equal $40,200 (C.D. and checking account). As one-half of this equals $20,100, that is the amount the wife can protect. The remaining $20,100 must be considered available to the husband and would make him ineligible until this amount is brought down to $2,000 or less. The couple would likely put the wife's protected amount in her name only. This would likely be done once the C.D. matures.

Income Determination

Once the husband becomes resource eligible, an income allowance would be determined. Of the couple's total income of $1,500, at least $1,452/month can be protected for the wife. As there are no excess shelter expenses, the husband would allocate sufficient income to bring her income up to $1,452/month or, in this instance, $952. The remainder of his income, $48 would be budgeted toward his nursing home care.

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Medicare Catastrophic Coverage Act has not reduced financial strain or increased independence among the elderly

During the 1970s and 1980s, nursing home care quickly drove many elderly men and women into poverty. The spouse who continued to live in the community often was left with little to live on when his or her mate required nursing home care. Out-of-pocket costs for nursing home care often were greater than income, and the copayment for care received under Medicaid was only slightly less than income. The 1988 Medicare Catastrophic Coverage Act (MCCA) was passed to protect community spouses from spiraling down to poverty. Unfortunately, the MCCA did not accomplish its goal, according to the results of this study.

The study was supported by the Agency for Healthcare Research and Quality (HS09515) and conducted by researchers at the University of North Carolina at Chapel Hill. They used longitudinal data from the National Long-Term Care Survey and exploited the differential effect of the MCCA on single people and married people, as well as cross-State variation in Medicaid laws, to test the long-run effect of the MCCA on spousal impoverishment and elderly behavior. Prior to 1988, the institutionalized spouse could keep a maximum of about $2,000 in nonhousing assets, depending on the State. All jointly owned assets counted toward the limit, although those held solely by the community-dwelling spouse were exempt.

The MCCA allows most couples to retain up to about $120,000 in nonhousing assets, but all spousal assets have to be combined and divided equally. As before, all of the institutionalized spouse's share of the assets must go toward nursing home payment. The community spouse can keep at least $12,000, but no more than $60,000, with the excess also going toward nursing home care. For example, a couple with $170,000 in assets could keep $60,000 (for the community spouse) plus $2,000 (for the institutionalized spouse); the nursing home would get $108,000 before Medicaid would pay anything.

In reality, the MCCA had no effect on income and no significant effect on the probability of living independently, receiving formal home health care, or obtaining other help. An alternative approach might be to provide paid help directly to the community-dwelling spouse. Single people were not affected by the MCCA.

For more details, see "The long-run effect of the Medicare Catastrophic Coverage Act," by Edward C. Norton, Ph.D., and Virender Kumar, M.A., in the Summer 2000 *Inquiry* 37, pp. 173-187.

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