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**VETERANS BENEFITS AND NURSING CARE:
A PRIMER TO VA HOME AND MEDICAID ELIGIBILITY**

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For those individuals who need long-term care and who may also be veterans, there are no shortage of questions about Medicaid eligibility, Veteran's benefits and gifting and asset protection issues.

While a comprehensive analysis of Medicaid and Veteran's regulations and benefits would go on for pages and likely induce sleep, below is a short overview offering some of the eligibility requirements for Medicaid and Veteran's benefits and how they differ from each other.

The New Jersey Department of Military and Veterans Affairs own and operate three nursing homes in New Jersey. Those nursing homes are called New Jersey Veterans Memorial Homes or NJ Veterans Nursing Homes. The three NJ Veterans Nursing Homes are located in Paramus, Edison and Vineland. These are state facilities that are operated in accordance with New Jersey regulations.

Medicaid is the government benefit program that can pay for nursing home and assisted living care for individuals who meet the asset and income requirements set forth in the Medicaid regulations that are administered by each state. Virtually all nursing homes and many assisted living facilities in New Jersey accept Medicaid eligible residents, though admission is much easier for those individuals who have the funds to pay these facilities privately before "spending down" to Medicaid eligibility.

Because admission to New Jersey Veterans nursing homes is limited to veterans and their spouses, with some exceptions noted below, and because there are only three Veterans nursing homes in New Jersey and perhaps thousands of nursing homes and assisted living facilities in New Jersey, the overwhelming majority of New Jersey residents who require long-term care will choose private nursing or assisted living facilities. But for those who meet the veteran eligibility requirements detailed below, there can be significant advantages to choosing the VA route over Medicaid in terms of asset protection and other issues.

Eligibility Requirements

1. Veteran Status and New Jersey Residency.

Admission to one of the New Jersey Veterans Nursing Homes is limited to veterans, spouses, surviving spouses, and Gold Star parents and widows. There is an order of priority for applicants set forth in the

regulations, and a preference is given to applicants who lived in New Jersey for at least two years immediately prior to the date of application for admission.

2. VA Financial Eligibility.

A. Assets. A single applicant to a Veterans Nursing Home cannot have more than \$20,000 and a married couple cannot have more than \$80,000, in “accountable assets”. “Accountable assets” is defined in the VA regulations as “any item that has a determined value and is owned solely by the applicant or spouse, owned jointly with the applicant’s spouse, jointly with others or jointly by the spouse and others, and must be spent down or liquidated and used toward payment of the residents’ care and maintenance....”

B. Income. The resident’s fee is 80% of net income, and the regulations require the resident to pay a portion of the cost of care based on their monthly income and ability to pay. Allowable deductions include a personal needs allowance (\$110 per month), health insurance premiums, contribution toward a prepaid burial account, court-ordered payments and other expenses. In addition, 12% of the remaining 20% of the resident’s net income (maximum \$20 per month) is set aside in a welfare fund at the institution.

The income of a veteran’s spouse (called the “community spouse”) is countable and aggregated in determining the facility fee. The community spouse is permitted to deduct certain expenses from income. For example, the community spouse receives a flat \$1,000 exemption for food, transportation, clothing, telephone and home maintenance. In addition, deductions requiring verification are permitted for rent, first mortgage payments, real estate taxes and insurance, heat and electric, water and sewer, life insurance for burial accounts, and other extraordinary expenses.

C. Spend-Down. If assets exceed the limits for accountable assets, the resident must pay privately until the excess assets are spent down on care until they reach the acceptable level of accountable assets.

Major Differences Between New Jersey Veterans Nursing Home Eligibility And Medicaid Eligibility

- 1. Asset limits:** While the VA permits an applicant to retain \$20,000 in assets, the Medicaid rules only permit an applicant to retain either \$2,000 or \$4,000 in assets (depending on the amount of fixed income received by that applicant) for Medicaid eligibility.
- 2. Look-back Period** – Under the Medicaid rules, there is a 60 month, or 5-year, look back for transfers of assets. This means that any transfer of resources for less than fair market value in the 5-year period prior to the month of the Medicaid application must be disclosed on the Medicaid application and will result in the imposition of a penalty or disqualification period which will delay Medicaid eligibility. In contrast, there is a 36 month, or a 3-year look-back period under the rules governing New Jersey Veterans Nursing Homes. Transfers made beyond the look-back period under both VA and Medicaid programs are not penalized.
- 3. Penalty Period** – Under the Medicaid rules, transfers for less than fair market value made during the look-back period result in the imposition of a penalty, or a period of ineligibility for Medicaid. The penalty period is calculated by dividing the amount transferred by a figure that

Medicaid presumes to be the average monthly cost of nursing home care in New Jersey, currently \$7,282. In contrast, under the Veterans rules, if an asset is transferred during the 36-month look-back period, the transferred assets are considered accountable assets and must be spent down on the resident's care. *N.J.A.C. 5A:5-2.1.*

4. **IRAs and Annuities** – If the Medicaid applicant owns IRAs, 401Ks and annuities, these are countable assets under the Medicaid rules and must be spent down before eligibility can be achieved. Under the Veterans rules, however, any payments from these assets are treated as income, but there is no requirement that the assets be spent down in order to achieve benefit eligibility. For those Medicaid applicants who own these assets, this can be a significant savings.

5. **Primary residence and household effects** – Under Medicaid rules, the primary residence and all household effects therein are exempt assets only if the community spouse resides in the home. If not, the home and all household effects are countable, must be sold and the proceeds used to pay care costs. Under the Veterans rules, however, the primary residence and household effects are non-accountable assets even if the community spouse resides elsewhere.

6. **Estate Recovery and Liens** – Under Medicaid law, following the death of the Medicaid recipient a state must attempt to recover from his or her estate whatever benefits that the State Medicaid program paid for the recipient's care. However, no recovery can take place until the death of the recipient's spouse, or as long as there is a child of the deceased who is under age 21 or who is blind or disabled. But the Veterans rules contain no requirement for estate recovery.

Conclusion

An increasing percentage of seniors will require some form of long-term care. Although some will only require short-term stays for rehabilitation, many individuals suffer from debilitating conditions such as dementia, strokes, Parkinson's disease and other conditions that will lead to nursing home stays of many years. For those individuals for relatively short periods of time. However, a significant percentage will remain in a nursing home for many years. The cost of a private nursing home in New Jersey today is approximately \$100,000 – \$120,000 per year. Fortunately, the cost of a NJ Veterans Nursing Home is usually significantly less than the cost of a private nursing home. As noted above, the Veteran's rules are more liberal than Medicaid in numerous ways. Therefore, for those veterans who qualify, a NJ Veterans Nursing Home may be a viable residential option, and perhaps a better choice than a nursing home that will provide care subsidized under the Medicaid program.

For more information on this or any related topic, contact Mr. Rice at 856.782.8450 or via email at timriceelderlaw.com. Mr. Rice provides clients with timely Updates which help them make informed decisions about their asset preservation and end-of-life issues. Lending his compassionate and caring nature to each client, Mr. Rice has been helping clients for over 20 years in the areas of estate and trust planning and administration; Medicaid planning and guardianships; will contests and litigation, powers of attorney and advance directives, among other areas.

To learn more how we may help you preserve your assets, visit us on the web at www.TimRiceElderLaw.com

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