

# THE B&B ALERT

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Specializing in Elder & Disability Law

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## *For Medicaid Applications, Having an Attorney Can Be Crucial*

*By Dana E. Bookbinder, Esquire*

Given the convoluted and ambiguous set of provisions that are our federal and state Medicaid laws, it is a wonder how any lawmaker could expect individuals, especially seniors with compromised health, to apply for benefits on their own. Federal regulations require Medicaid caseworkers to be helpful to those who file for benefits, but state and federal budgetary constraints have created a reality that is much more frustrating than the printed law would suggest. Many individuals file applications unprepared for the minutiae that will delay the processing of their application for several months or cost them tens of thousands of dollars in health care expenses. Fortunately, the public is becoming increasingly aware of the difference that an attorney can make with Medicaid applications.

The most common obstacle to obtaining a timely Medicaid approval is the failure to provide the Medicaid office with complete information. The amount of paperwork required with each application is burdensome, and under new federal law, last year it became potentially more burdensome. In addition to comprehensive financial information dating back three (soon to be five) years, Medicaid applicants must submit a variety of documents such as marriage licenses, birth records, deeds, affidavits, etc. to support their applications. The documentation required varies somewhat with each case, but the paperwork is oppressive for even the most organized individual. When a senior is dealing with his spouse's ailing health and his own limitations, the task of applying for benefits becomes overwhelming.

The most daunting obstacle to a Medicaid approval is the Deficit Reduction Act of 2005. This Act extended the three-year lookback to five, creating much more homework for anyone seeking benefits. It also changed the rules regarding transfers of assets and created partial month penalties. Whereas the old rules granted Medicaid eligibility for a certain period of whole months,

the new laws grant or deny Medicaid for partial month periods. With regard to certain assets such as annuities and promissory notes which may be held by Medicaid applicants, the new law confuses most Medicaid caseworkers rather than guides them. The result is that many more Medicaid applications have to be sent up from the county level, where the applications are originally filed, to central state offices for review. In New Jersey, the Division of Medical Assistance and Health Services in Trenton has been collecting applications that include trusts, annuities, and notes for several months. This is slowing the entire process.

To those who do not practice elder law, it is always unbelievable that the counties implement certain Medicaid eligibility policies which are not necessarily written down. Other policies are handed down from the state office to the county supervisors through memos that do not reach the public until after the supervisors begin to implement them. For instance, the firm recently learned that such a memo was disseminated among the counties concerning prepaid funerals and whether the Medicaid eligibility rules permitted prepaying a funeral luncheon.

Because much of what affects those applying for Medicaid is not part of the written law, different county Medicaid offices enforce different procedures for filing applications. Certain eligibility requirements also vary from county to county. Some counties permit applications by mail, some permit non-lawyers to represent the applicant at the meeting to file the paperwork, and others are stricter, only permitting certain family members or attorneys to represent the individual applicant. Partial month penalties as required under the Deficit Reduction Act have begun to be imposed by Burlington County, for instance, yet not by the other local counties as of this writing. Counties also vary in the levels of proof they require to permit a child of a Medicaid applicant to retain his or her parent's house in his own name with no Medicaid penalty.

Finally, another difficulty is obtaining Medicaid approval is the public benefit numbers themselves. These figures on which Medicaid eligibility hinges change each year. Certain figures are updated each January and others in July. They include income and asset caps. To many seniors' surprise, they also include strict limitations on the amount of assets that spouses of Medicaid recipients may retain.

The Medicaid application process and eligibility laws may be designed for the public's use, but they are complex and burdensome. They are especially daunting for the population they are designed to assist. Especially in a time when our government is tightening the budget and implementing restrictive laws such as the Deficit Reduction Act, it is crucial for families to obtain legal counsel. Failure to plan ahead can severely impact a family's financial status, especially if there is a spouse involved who wishes to maintain his or her home.



Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

**Our offices will be closed in observation of the Holidays as follows:**

- ❖ **Thursday, December 21, 2006 at noon**
- ❖ **Friday, December 22, 2006**
- ❖ **Monday, December 25, 2006**
- ❖ **Monday, January 1, 2007**

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