

Elder Law Advisor



July 2011

My Spouse or Parent is Receiving Medicaid Benefits; Now What?

By: Attorney Patrick J. Bodden

For many families, the process of going through a Medicaid (sometimes referred to as "Medical Assistance") application can be a difficult task at a highly emotional time. However, once an individual in a nursing home is found eligible for Medicaid benefits, the individual's family may think their job is over -- other than their responsibilities as a caring spouse or child. In many situations, this is not the case.

- continued on Page 2 -

What are the Two Important Recent Updates Made by the Wisconsin Department of Health Services?

By: Attorney Mark D. Munson, CELA

The first update increases the minimum monthly maintenance needs allowance (or "MMMNA") from \$2,428.33 to \$2,451.67. When a married person is receiving medical assistance benefits and his or her spouse (the "community spouse") has income less than the MMMNA, a portion of the benefit recipient's income is allocated to the community spouse each month to raise the community spouse's income. The law is designed to enable the community spouse to receive sufficient income to remain in the community; however, if the combined incomes of the spouses is less than the MMMNA, no additional income or benefits are provided.

The other recent update made by the Department is an increase in the divisor used to calculate the penalty period imposed for divestments (gifts) that must be disclosed on a medical assistance application. The divisor has been increased from \$6,216 per month (\$204.35 per day) to \$6,554 per month (\$215.46 per day). The increased divisor has the effect of shortening the penalty period, which may allow greater asset protection.



In This Issue

My Spouse or Parent is Receiving Medicaid Benefits; Now What?

What are the two important recent updates made by the Wisconsin Department of Health Services?

Around the State

Attorneys Practicing Elder Law

Patrick J. Bodden
Jane E. Lokken
Mark D. Munson, CELA

Learn more about Ruder Ware's Elder Law Group by following this [link](#).

For example, following the eligibility determination, family members must make sure all assets titled in the name of a married recipient are retitled in the name of the community spouse (the spouse not in the nursing home) because the spouse in the nursing home cannot have more than \$2,000 of assets. This retitling process must be accomplished within the twelve months following the eligibility determination or on-going eligibility will be denied.



In most circumstances, the twelve-month period is more than enough time to accomplish the retitling. However, there is one type of asset that must be addressed immediately. Long-term care insurance (also referred to as “nursing home insurance”) is often in the form of a defined benefit to help cover the costs of nursing home care. For example, a long term care insurance policy may provide that if the insured party is in a nursing home, the policy provider will pay a fixed amount per day to the nursing home to help with the cost of care.

These long term care benefits are included in the calculation of an individual’s Medicaid benefits. In other words, the amount of Medicaid benefits available to a person will be reduced by the benefits supplied by a third party. However, instead of these long term care insurance payments being made directly to the nursing home (as is typically the case before Medical Assistance eligibility), Wisconsin law requires that future payments be assigned directly to the State of Wisconsin. This assignment must be made within thirty days of the eligibility determination or the individual who has just been found to be eligible for Medical Assistance benefits may lose that eligibility.

Around the State

Mark Munson and **Jane Lokken** attended the National Academy of Elder Law Attorneys (NAELA) Wisconsin Chapter Annual Meeting.

Mark Munson recently attended NAELA’s “Elder and Special Needs Law Annual National Conference in Las Vegas, Nevada.

Through his active involvement in NAELA and regular attendance at their national conferences, **Mark Munson** was asked to serve on their annual meeting planning committee and will be involved in setting the agenda and selecting the presentation topics.

Jane Lokken attended “WisPACT and Other SNTs” continuing education presentation by WisPACT and the Elder Law Section of the State Bar in Madison.

“Paying Retirement Benefits to Trusts” recently ran in the Wisconsin State Bar’s “Elder Law Newsletter” published by the Elder Law Section. The well-received article, authored by **Mark Munson**, was distributed to elder law professionals across the state.

Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Social Security benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship
- Veterans’ benefits

About the Authors

Attorney Patrick Bodden



At Ruder Ware, Patrick advises business owners and individuals in all aspects of business and personal planning, including the formation, operation, and growth of closely held businesses, and the design and implementation of estate planning and asset protection techniques.

Attorney Mark Munson, CELA



Licensed to practice law in Wisconsin, Illinois and South Dakota, Mark Munson principally advises clients in the areas of elder law, public benefits (including special needs trusts), estate and trust planning, and taxation. Mark regularly advises clients in the areas of asset protection and medical assistance eligibility. Mark also assists clients with probate and estate administration, trust administration and guardianship.

Mark is a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation, the only organization accredited by the American Bar Association for the certification of elder law attorneys in the United States. In order to become a CELA, Mark was required to have sufficient experience in various practice areas with the field of elder law, pass an all-day comprehensive examination that tests various issues and disciplines within elder law, and receive the recommendation of other elder law attorneys in Wisconsin and the United States.

Attorneys Practicing Elder Law at Ruder Ware



Patrick J. Bodden
pbodden@ruderware.com



Jane E. Lokken
jlokken@ruderware.com



Mark D. Munson, CELA
mmunson@ruderware.com