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# The Middle Class Struggles in the Medicaid Maze

**By JANE GROSS**

WESTBURY, N.Y. - At the threshold of Vincent J. Russo's law office here, a sign promises that "Peace of Mind Is Attainable."

It is a reassuring beacon for clients who come to see Mr. Russo, an elder-care lawyer, at a time of crisis and confusion.

They arrive at his door as Adam Alberico did four years ago, when his parents were no longer able to look after themselves in frail old age.

Mr. Alberico's mother, formerly a seamstress, was slipping into dementia. The Alzheimer's unit at an assisted living community, which he thought she would prefer to an institution, charged $5,800 a month. His father, a retired tool and die maker, had had a series of heart attacks and needed a nursing home. That would cost $7,500 a month.

"None of us is fully prepared for this," said Mr. Alberico, 58, who recently retired as associate comptroller at Columbia University. "The cost is unbelievable. And who can figure out the rules and regulations? It's tough being old and it's tough being our generation."

Medicaid, the government health insurance for the poor, can help pay for long-term care in many situations, but for tens of thousands of people like the Albericos, it takes a visit to a lawyer's office to figure out how to qualify. There, the Depression-era elderly and their baby boom children are guided through a tangle of emotions and a thicket of ever-changing regulations - 40 years of wrangling in Congress and hand-wringing by middle-class Americans.

On his first visit, Mr. Alberico laid out the problem for Mr. Russo. His parents, Adam and Prudence, had Social Security income but no pension. They had $40,000 in savings and $150,000 in real estate equity. Long-term care would cost $160,000 a year and exhaust their savings in 15 months. "I had no idea what to do," Mr. Alberico said.

So Mr. Russo educated Mr. Alberico about Medicaid planning, a series of techniques for disposing of assets in order to meet the standard of poverty required since the program's creation in 1965 - before anybody anticipated today's exploding nursing home population. Nationwide spending on long-term care, most of it in nursing homes, has grown to $183 billion annually, nearly half paid by Medicaid, and many techniques for sheltering assets are likely to be restricted within a year.

Vastly more complicated than Social Security and Medicare, the two other insurance policies for America's elderly, Medicaid is a joint federal and state program with wildly different regulations and reimbursement rates in each state. But each time Congress has tried to fix the system, the new rules seem more confusing, and susceptible to more manipulation, than the ones they replaced.

The Albericos' Medicaid planning had as its groundwork an abstruse provision added in 1988, known as spousal refusal. The provision, allowing one spouse to refuse financial responsibility for the other, was part of an attempt by Congress to prevent a healthy spouse from winding up penniless paying for an ailing partner's care. Until the changes in 1988, some elderly couples would divorce to avoid such impoverishment.

Congress decided that one spouse could hold on to some money, $19,000 to $95,000, depending on the state. Further, lawmakers made it possible for states, New York among them, to give one spouse the right to refuse any financial obligation, leaving Medicaid responsible for the partner.

But states adopting this provision have the option of suing to recover the money spent by Medicaid, making the tactic a gamble for families, who essentially count on lax recovery efforts or a settlement with the state.

All of this created plenty of work for elder-care lawyers, whose numbers doubled to 6,000 in the last decade. Though Congress tried to criminalize Medicaid planning in 1996, the "Granny Goes to Jail Law," as it was known, drew ridicule. It was rewritten so that only lawyers could be prosecuted, but later was found unconstitutional.

And so Mr. Russo advised Mr. Alberico that his parents' assets should be transferred to his mother, promptly, while she was still competent to sign the legal forms refusing to support her husband. That made Mr. Alberico's father a ward of the state. A nursing home accepted him but insisted that the younger Mr. Alberico pay for two months of care upfront, or $15,000, in case his father's Medicaid application was refused.

Next, Mr. Alberico, with power of attorney, sold his mother's condo to finance her move to assisted living, a long-term care option available only to those who can pay their own way or have private insurance. When she ran out of money in January, Mr. Alberico and his sister continued to pay the bills. They had no idea how long they could afford to do that, but the question quickly became moot. By March, the older woman needed a feeding tube and was moved to a nursing home, and Medicaid picked up the cost.

Medicaid also paid for Mr. Alberico's father in a nursing home for five months until his death, leaving the federal and state treasuries poorer by about $30,000. The state later tried to recover the cost of his care. Briefly, it looked as if the Albericos would have to repay the government for the money his mother sheltered by spousal refusal. But guided by Mr. Russo, Mr. Alberico gathered the invoices and the canceled checks to prove that his mother had spent every last dime on assisted living. The state backed down.

"I guess it was pretty cut and dried by then that we'd used up all the money," said Mr. Alberico, whose legal bills were about $10,000 and who will inherit nothing when his mother dies.

For elderly people still well enough to manage their own affairs, even the best legal advice does not necessarily lead to Medicaid planning. Among the current generation of elderly, resistance to giving away money - and thus independence and control - can be very powerful.

Blanche Gische, 81, a widow and former bookkeeper, has about $200,000, including a condominium in Florida worth about $175,000. She also has a son-in-law, Steven A. Schurkman, an elder-care lawyer in White Plains. But Mrs. Gische has declined his advice to transfer ownership of her condo to her two daughters.

"I don't have to turn to anyone to get along," she said. "I live within my means."

Recently, she broke her wrist, refused to come north to recuperate from surgery, and insisted on paying for her own home health aide, at $100 a day, for as long as six weeks. She said she would balance her budget by delaying the replacement of her 1997 Nissan Sentra.

Mrs. Gische said she understood the consequences of holding on to everything she owns. If she winds up in a nursing home, her cash will go quickly. She will then be entitled to Medicaid, but after her death her home will be subject to a lien by the state to recover the money. Her daughters may wind up with nothing.

Mr. Russo, who is chairman of the Medicaid task force for the National Academy of Elder Care Attorneys, said that inheritance protection often motivates adult children to initiate Medicaid planning. But that is seldom the priority for their parents, he said.

"Do I have Mary saying, 'I want to game the system and get on Medicaid?' " Mr. Russo said. "All Mary wants is control, to stay in the community. If I say 'You have $100,000, give $50,000 to your daughter today because you might wind up in a nursing home,' she'll say 'Over my dead body' and that's the last time I'll see her in my office."

"Over my dead body" is a common cry among old people when they are told they may need Medicaid to pay for nursing home care, which averages $61,685 a year nationwide, $93,600 in New York State and more than $200,000 in some top-notch centers in major metropolitan areas.

"They consider it charity," said Daniel Reingold, executive vice president at the Hebrew Home for the Aged in Riverdale.

But pride gives way to reality. At Hebrew Home, with annual rates of $90,000 to $216,000, 85 percent of the residents are on Medicaid. Helen Obler, a 92-year-old widow, is now among them, after spending her last $150,000 in her first year at the home.

Mrs. Obler decided to leave Florida two and a half years ago to be near her closest relative, a nephew. But she missed the three-year window for giving away assets without Medicaid penalty.

"I wasn't thinking I'd ever be here and then it was too late," Mrs. Obler said.

Mrs. Obler's husband, Adolph, a photographer, died 20 years ago of a heart attack. Now she stares at his portrait on the wall of her room. "We never got to discuss it," Mrs. Obler said. "But I know what he's thinking. He worked hard for that money and he'd be furious there's nothing left."