Examining Abuses of Medicaid Eligibility Rules:

For almost twenty years I practiced Medicaid Planning Law in Manhattan, Brooklyn and Queens. Many of my clients were the spouses and children of Alzheimer's and Parkinson's patients. Sometimes patients themselves. They were middle class and in the middle of a health care and financial crisis.

Recognizing the cost of long term care my clients wanted to protect assets and qualify for Medicaid to pay for long term care. Specifically they wanted assistance paying for in home care and nursing home care. They used a variety of techniques to accomplish this. Sometimes it was transferring assets other times spending them. I counseled many clients on the use of trusts and directed others to purchase annuities. I drafted documents to evidence loans and family care agreements. We converted countable resources to non-countable ones and attempted to maximize benefits and minimize costs. In short, we did what anyone would do. Whatever seemed best to protect the family considering health care costs and a families particular financial situation.

I began my practice before OBRA 93. Since then I have studied and taught other about changes in the Medicaid Eligibility Rules. I have taught at the Association of the Bar of the City of New York, the National Academy of Elder Law Attorneys, the Alzheimer's Association, Parkinson's Foundation and many other organizations. I joined many clubs, associations and groups that practiced Medicaid planning and regularly discussed techniques with other lawyers, financial professionals, social workers and others with interest.

I watched the law go from bad to worse. We had a system that needed improvement when I began my practice and changes went steadily in the wrong direction. We created a system the scares sick people and their families with penalties and criminology. It left my clients not knowing what to do and not accessing necessary care when they needed it.

The methods to qualify people for Medicaid have not changed very much in essence even as the names and document were adjusted. At the same time the burden of every applicant has grown enormously. People do not have five years of documented financial history. They do not know what disqualifying transfer means. Everyone is afraid of being penalized.

The problem was rarely an abuse of rules. It was the rules themselves. Our rules should guide people with illness to care. They should not stand as a barrier between sick people and their ability to get the care that they need. The current rules are onerous, convoluted and counterintuitive. They cause people to suffer and die without receiving care because of fear. Instead we need a cost sharing approach, not a poverty one.

Looking for an imaginary cheater we have rules that are overly burdensome to the patients and their families that need our help. Current and preposed rules delay

necessary care rather than effectuating it. The problems are not even the case of a few people abusing the system causing a burden on everyone but the image of abuse causing harm. Do not be afraid that undeserving sick people will be provided with care.

I never met a client who was not willing to share the burden of the cost of care. Only people who were afraid that they'd run out of money and be without. They were afraid that their families would suffer. They wanted the best possible plan.

Our system must be one of care and not penalties. A period of ineligibility is a prescription for abuse. The abuse of not being cared for. We cannot tell sick people that they are ineligible for care but must instead reform our rules to direct people to care with a cost sharing approach.

We protect peoples homes some of the time. People do not understand life estates, estate recovery, intent to return home. We protect homes but not the income necessary to pay the costs of maintaing those homes. People should be cared for in their homes, not in nursing homes. Protect them in their homes and provide cost sharing that enables care without abject poverty.

My short conclusion is that abuse of Medicaid Eligibility Rules is a myth. A Powerful and potent myth but a myth nonetheless. I met almost no one who wanted to cheat. Only people who wanted to do what was the best, most responsible thing for their loved ones.

Those who did cheat and were caught by the Office of Revenue and Investigations settled cases easily and for pennies on the dollar.

Everyone is entitled to some amount of care when they are in need. However we had a system that is not fair or equitable providing generously for some and not at all for others.

We must have a system that invites people in with a cost sharing approach. Not a system that has penalties and punishments for the elderly who need care

We should not be afraid of a complex system that can adjust for patients in may different circumstance. Each patient receives an individualized plan of care and the care system preform better on this basis. Medicaid too can be individualized to provide cost sharing for each beneficiary, not an all or nothing approach.

Promulgating more onerous transfer of asset rules will not deter the most creative individuals or planners. It only hurts more typical beneficiaries. Currently creative planning allows gifts and applications to begin penalties followed by return of assets to cure them. Our most novel discussions include fantasy ideas like Medicaid planning through baseball cards. While potentially lawful, no actual client wanted to use this kind of approach.

People want security and care. They save for a lifetime and fear running out of money and being left without. Seniors take their own lives to avoid being a burden on their families. Proper Medicaid law can ease these burdens.

An Alzheimer's patient in a New York City nursing home can cost spend Fourteen Thousand dollars a month on care. In the alternative Medicaid will pay the same nursing home about Ten Thousand dollars a month for the same care. Caring for an Alzheimer's patient does not really cost that much. Most patients receive family care in the home at a fraction of the cost.

Rich people do not go to our soup kitchens. Food pantries do not ask for five years of bank statements. The food is free and yet not abused.

Provide basic, humane benefits to everyone without penalties. Do not fear sick people getting care and not paying for it. The people who can afford it will buy better care. Provide something for everyone without a penalty system and everyone will benefit.

Finally, please consider the Veterans Administration Medical Foster Care Homes as an approach that should be duplicated in our Medicaid program.

I have never received any federal grants or contracts and testify on my own behalf.

David Dorfman