

Legal NEWSLETTER

This Issue

ON THE ROAD AGAIN

YOU DON'T SAY?

**MEDICAID: MYTHS
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**ESTATE PLANNING
SEMINAR**



ON THE ROAD AGAIN

By: Attorney Brent Jacobson

If you are traveling out of state and are injured in an automobile accident due to the fault of another, you may have many questions, including where a claim should be brought, whether you will need a local attorney, and what your rights to recovery are. Your first step should be to alert your automobile insurer so the insurer is on notice of coverages under your policy that are or may be implicated.

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YOU DON'T SAY? POLITICAL SPEECH IN THE WORKPLACE

By Attorney Brian Formella

Another election season is upon us. That means there may well be spirited discussions around the workplace water cooler or on social media as we express opinions on candidates and political issues. The First Amendment to the U.S. Constitution generally protects the fundamental right to free speech, but it does not apply to private employers, who can generally fire employees for their political activities or affiliations.

Generally, employees in the private sector do not have a constitutional right to free speech at the office. But employers still need to be aware of federal and state laws that protect workers' speech in certain situations. For example, the Wisconsin Fair Employment Act prohibits discrimination against employees because the individual declines or refuses to participate in religious or political meetings or religious or political communications.

Similarly, an employer may not interfere with an employee's right to engage in concerted activity or for mutual aid or protection. Such speech is protected from retaliation under the National Labor Relations Act. This right to engage in concerted activity applies to workers in both union and non-union settings. Federal law protects the right to speak with fellow employees about matters pertaining to wages, hours and conditions of employment in the workplace.

Although Wisconsin does not have a law that prohibits discrimination on the basis of political affiliation, the law that protects the right of employees to decline meeting attendance is a measure of worker protection. Wisconsin employers are advised to be cautious about trying to corral employees into political discussions. It is also a discriminatory practice in Wisconsin for an employer to threaten to discharge or otherwise discriminate against an employee as a way to require the employee to attend the meeting or communication where the primary purpose is to communicate the opinion of the employer about



religious matters or political matters.

These rules do not apply if the employer is a religious association not organized for private profit or in an organization or corporation that is primarily owned or controlled by such a religious association and the meeting or communication is meant to communicate the employer's religious beliefs or practices. This law does not apply to a political organization including a political party.

Under the law, an employer still has the right to discuss with its executive, managerial or administrative personnel, matters relating to the operation of the employer's program, business or enterprise, including issues that may arise under the law that limits discrimination from mandatory meeting attendance or communications. An employer may offer meetings or other communications about religious or political matters for which attendance is completely voluntary.

Defining speech in the private sector employment context is not as easy as it might first appear. If you feel you have been discriminated against due to political or religious speech at work, you should consult with one of our employment law lawyers. ◇

Injured? Don't be a victim twice.

MEDICAID MYTHS AND TRUTHS

By Attorney Amy Eddy

The cost of nursing home care can be substantial, leaving many people wondering when Medicaid will cover long term care costs. Medicare only covers a small amount of nursing home costs under limited circumstances. As a result, many seniors will rely on Medicaid, provided they meet with financial eligibility requirements. Below are some common myths and truths about Medicaid eligibility.

Myth: You have to give away everything you own in order to qualify for Medicaid.

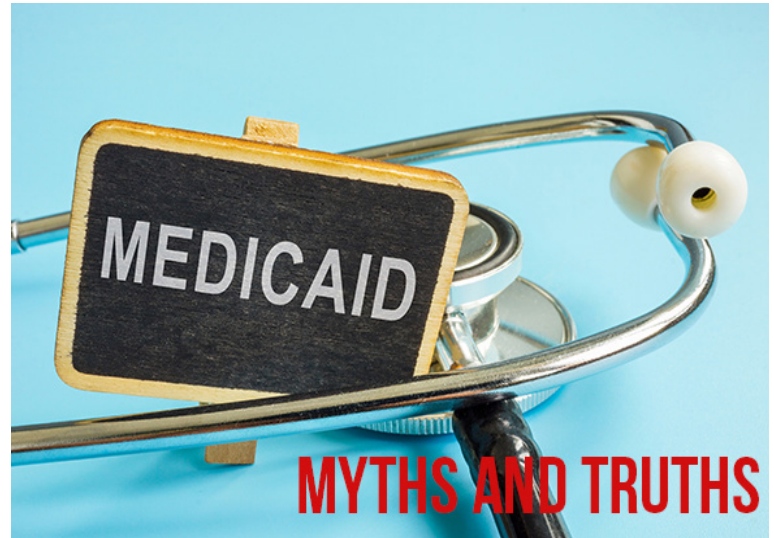
Truth: If you need nursing home care for other than a short-term rehabilitative stay, you will be expected to pay the private pay rate unless your assets are below a certain threshold as follows:

- A single applicant must have under \$2,000 plus exempt assets;
- A married couple who both need care must have under \$3,000 plus exempt assets;
- A married couple with one spouse who needs care and one spouse living at home can keep between \$50,000 and \$154,140.**

Exempt assets include a vehicle, personal property, a funeral trust, and life insurance if the death benefit is less than \$1,500. If an applicant for Medical Assistance is married, the residence is not a countable asset as long as the spouse is living in it, and the retirement assets of the spouse in the community are also exempt.

Myth: You will be penalized for five years if you give anything away to qualify for Medicaid.

Truth: Not exactly. If you give money or property to your children, or to anyone else, you will be temporarily disqualified from Medicaid eligibility if the gift was made within five years of applying for Medicaid. The recipient of the gift is not required to return the money or property, nor are they otherwise liable for your care costs. The



gift is called a divestment under the Medicaid rules.

- “Divestment” is the disposing of assets for less than fair market value. If an applicant for Medicaid has divested assets within five years of applying for Medicaid, a disqualification period may result, which means that the institutionalized person will be ineligible for Medicaid for a period of time. The penalty period is calculated by dividing the total divested amount by the statewide average nursing home cost of care (currently \$315.61 per day)** in effect at the time of the Medical Assistance application. This number is the number of days of disqualification.
- The start date for the period of ineligibility will be (in most cases) “the date on which the individual is eligible for Medical Assistance under the State plan and would otherwise be receiving institutional level care . . . but for the application of the penalty period.”*

Myth: You may give \$18,000 to each of your children as a way to protect it from the nursing home and it will not be a “divestment.”

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Lawyers where you live.

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For example, the at-fault driver may have insufficient automobile liability limits given the nature and extent of your injuries. If you carry uninsured and underinsured motorist coverage on your automobile policy, your insurer should be on notice of the potential for such a claim. In addition, you likely carry some amount of coverage for medical bills related to the collision under your automobile policy. You will want to establish a claim with your insurer, and provide your insurer's information to health care providers for billing purposes.

When it comes to legal representation, consulting with an attorney from your home state may be useful in several respects:

First, they may be in a better position to research and recommend local counsel in the state where the collision occurred.

Second, you may find yourself in a dispute with your insurer, particularly if an underinsured motorist claim arises. These claims are contractual, meaning that the venue is Wisconsin rather than the state of the collision.

Third, given the nature of your injuries, you may require extensive and ongoing treatment following your return home. An out-of-state attorney may desire some involvement from Wisconsin counsel to assist in gathering medical bills, records and coordinating the testimony of treating providers should the case proceed through litigation.

Finally, should your personal injury claim turn into a formal lawsuit, it will likely be handled in the state where the accident happened. However, your Wisconsin lawyers might also have the option to file the case in Federal Court. A local attorney can explain the benefits and drawbacks of Federal vs. State Court based on their knowledge of the local legal system and jury

If you have an out-of-state automobile accident and require an attorney, please contact our experienced personal injury attorneys to assist you. ♦

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Truth: Divestment includes transfer of any assets without any dollar limit. Assets are defined as "all income and resources of the individual or the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive . . ." The \$18,000 gift amount is the amount that is exempt from gift tax reporting in 2024.* There is no exempt amount for divestment.

Myth: A revocable trust will protect your assets from the nursing home.

Truth: If income and principal are available to the Grantor, the assets in the trust are available to pay for nursing home care and are not protected. A special needs trust can be used to protect the assets of a disabled individual who is now receiving public benefits, or who may become eligible for benefits in the future.

Myth: If you are married and your spouse is in a nursing home, he or she can qualify for Medicaid if you put all of your joint assets in your name.

Truth: Assets are counted, regardless of which name they are in. Furthermore, Marital Property Agreements are disregarded for Medicaid purposes.

For answers to more Medicaid questions and concerns, consult with an attorney who practices in elder law and disability planning.

* United States Code 42 Section 1396p(e)(1).

**Amounts change annually and are listed in this Article as of June, 2024.♦



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