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By Diana Conway
Newsweek

My Turn: Cheating Uncle Sam for Mom and Dad

Why do so many otherwise honest citizens think it's OK to take Medicaid money they don't deserve?

LAWYERS WHO SPECIALIZE in elder law, and who are well versed in Medicaid rules, can show the upper middle class how to be-come poor on paper, so that the government will pick up their nursing bills. These arrangements are all perfectly legal, but are they ethical?

A few years ago my 85-year-old mother looked at the column of numbers the housing manager of her new assisted-living home showed her and burst into tears. The manager had just figured out that a studio apartment, 14 by 14 feet, would cost her \$2,300 a month. He handed my mother a tissue and turned to me. "So many of our elders react this way," he said. "They've saved all their life for a rainy day, but when I tell them that rainy day has arrived, they can't bear to part with their money."

Today's old folks are survivors of the Great Depression. My mother always delighted in finding a penny on the street. If someone handed her a business card, she'd draw a flower on the reverse side and turn it into a holiday gift tag. Supermarket produce bags, used wrapping paper and plastic cutlery from fast-food restaurants filled one whole closet of her house. When I explained that her bank account would almost certainly take her to the end of her days, she ran her fingers through her silvery spider-web hair and protested, "But I worked so hard to leave something for my grandchildren!"

Nobody wants to hoard savings only to see them hemorrhage away at the rate of thousands of dollars a month. My friends, who were once "60s radicals, are now sixtysomething opportunists in search of legal loopholes. They discuss putting family money in trusts or tax-exempt annuities that could leave the government subsidizing their parents" or their own end-of-life care. Ethics never enters the equation.

My mother was lucky. She died quickly enough to leave her grandchildren some college money, scraped together from her pitiful salary as a secretary and her minuscule Social Security pension.

As a child of divorce, I have another mother, too"my father's second wife, who lives in California and suffers from dementia. When she was hospitalized and it became clear that she would need the kind of round-the-clock care a nursing home could provide, the first question the hospital and HMO social workers asked my father was "Is your wife Medi-Cal eligible?"

Medi-Cal is California's Medicaid program. It picks up the long-term-care expenses of people who can't pay for themselves. When I called a Medi-Cal office on my father's behalf, I found out that to qualify he had to have \$89,280 or less in assets and a monthly income of no more than \$2,232. "If he has more," said the helpful lady on the other end of the line, "he'll need to spend down to that amount and then wait three years before he applies for aid. He might want to see a lawyer."

"You mean about how to hide his assets?" I asked.

She laughed nervously and said that although she couldn't advise me to do such a thing, lots of people give money to their children or otherwise arrange their finances to avoid spending all their

savings for long-term care. She told me that my father could even go to court and make a case for a bigger monthly allowance.

Medicaid is designed to help the truly indigent. If we steal from the federal government, or the state of California, we steal from our fellow citizens, whose taxes go up to pay for our care. Medi-Cal currently pays about \$1,000 less a month than the average private patient. That means nursing homes must raise the rates for private patients to compensate.

"When ethics and self-interest seem to be in conflict, we face an ultimate choice," writes ethics professor Peter Singer in "How Are We to Live?" My father expressed his choice this way: "I've never cheated one penny on my taxes, and I'm not going to start hiding money now. If we outlive our savings, I won't feel a bit guilty about accepting Medicaid. But I sure as heck am not going to pretend to be eligible before then."

Every well-to-do senior who hides savings for the gain of his own family and seeks benefits meant for the needy weakens communal bonds. Have we become a nation of Scrooges, counting our own coins with little concern for others?

I'm proud of my father. If my stepmother lives several years in her nursing home, or if he also needs long-term care, their life savings will run out. But he will leave me one thing of great value: an example of ethical behavior in an era when most people are out to grab everything they can for themselves.

Conway lives in Halibut Cove, Alaska.

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Bernard A. Krooks' Letter to the Editor

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Letters to the Editor
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The Editor:

Diana Conway [My Turn: Cheating Uncle Sam for Mom and Dad, 1/27/03] looked at the use of the Medicaid program by seniors and saw something wrong with the picture. But the manipulations she fixed her eyes on - legally sheltering assets to obtain Medicaid coverage - is not the real problem. Her pronouncements of what is ethical or unethical are easy to make, but objectivity requires us to look honestly at the whole picture and ask how we, as a society, care for the elderly and chronically ill. The answer is not pretty.

Medicaid is the product of our nation's unwillingness to treat health care - including long-term care - as a basic human right. If we did, we would embrace some system of universal access to care, whether it be a social insurance model or a private model with guaranteed access. In a universal model, everyone pays a fair share, and everyone receives coverage.

Paradoxically, we do give seniors virtual universal coverage for meeting their acute care needs. Heart bypass surgery, costing tens of thousands of dollars, will not impoverish any senior, because Medicare will cover it. And we all pay our fair share for that coverage. But if we are inflicted with a chronic illness such as Alzheimer's disease, then we are left to fend for our care on our own, until we are officially impoverished under Medicaid criteria. Is this an ethical social policy that puts mom and dad into a lose-lose corner? First they lose their health; then they lose their financial solvency? Is it a surprise to anyone that mom and dad will look for legal ways to preserve what they can of the fruits of their lifetime in order to protect each other's solvency and leave some legacy to family? That's not cheating. That's preservation of one's dignity and self-worth. The ethical scandal here is our public policy, not mom or dad's avoidance of poverty. Moms and dads everywhere are willing to pay their fair share. We just don't give them a system to do it in.

The California Medicaid worker who advised Ms. Conway to see a lawyer actually gave her good advice. But the assumption that the lawyer will just help her hide her father's assets from Medicaid is wrong. The lawyer's professional ethical obligation

is to explain all the options her father has for meeting the cost of long-term care, and their pros and cons. In fact, the New York Court of Appeals (New York's highest court) has concluded that individuals should be permitted to do as they wish with their assets and that "no agency of the government has any right to complain about the fact that middle class people confronted with desperate circumstances choose voluntarily to inflict poverty upon themselves when it is the government itself which has established the rule that poverty is a prerequisite to the receipt of government assistance in the defraying of the costs of ruinously expensive, but absolutely essential, medical treatment."

Medicaid is not the only option, particularly if dad plans earlier rather than later. Long-term care insurance can benefit many seniors and help avoid the need to rely on Medicaid. However, many seniors are not able to purchase long-term care insurance due to a pre-existing health condition or lack of affordability. Home care opportunities are often overlooked until too late in one's disease. Options for turning the equity in one's home into a source of income to help pay for care are available and may be expanded by the current Administration. Elder law has become a certified specialty area of law that helps seniors deal with the complexities of healthcare and financial decision-making, Medicare, Medicaid, and end-of-life issues, among others. The aim of elder law is first to empower older persons - poor, middle class, or rich -- with the knowledge they need to live out their lives as they see fit. It then helps implement the legal options chosen. But most importantly, it does so according to the older person's own goals, wishes, and values, as defined by that person, and not as defined by the attorney, nor by Uncle Sam, nor by Ms. Conway.

Sincerely,
Bernard A. Krooks