Types of Nursing Home Medicaid Planning

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Full nursing care can cost $100,000 to $150,000 per year. Even families that have saved well can deplete their assets quickly under these circumstances.

Medicaid planning often involves identifying opportunities to preserve some of a family's hard-earned assets when an individual, a spouse, or a parent needs full nursing care. These funds can be used to support the healthy spouse, in the case of a married couple, or can be set aside to supplement an individual's care during his or her lifetime and then pass to the individual's family at death.

Many misunderstandings and over-simplifications circulate about the Medicaid planning/application process and the complex rules involved. We find that people are often confused about whether they need to spend all of their assets before applying for Medicaid; others are confused about the five-year look-back rule for gifts.

In the broadest sense, there are two forms of Medicaid planning: (1) advance Medicaid planning and (2) planning at the time of nursing home admission.

Advance Planning

Advance planning involves the transfer of assets five or more years before nursing home admission is anticipated. When an individual applies for Medicaid, the Medicaid agency currently requires information on the prior five years of financial transactions to determine whether any gifts of assets have been made.

The idea behind advance planning is to move assets out of the potential Medicaid recipient and/or spouse's name while they are still healthy so that, if a five-year period passes, those transferred assets are no longer within the scope of the Medicaid application — they are "free and clear" of the reach of Medicaid and the nursing home. Those transferred assets can then be used for the care of the individual or couple for the remainder of their lives should they need any additional funds, and can be inherited by children or heirs after death.

Advance planning often uses an irrevocable trust that we call a Medicaid Asset Protection Trust (MAPT) as a tool to hold the transferred assets. The trust not only protects the assets, but also, in some cases, preserves valuable tax benefits that are not otherwise available if assets are transferred directly to family members. These irrevocable trusts further protect assets from creditors of beneficiaries and provide safeguards in case the beneficiaries themselves are in need of future government benefits.

Planning at the Time of Nursing Home Admission

The second form of planning is planning at the time of a permanent nursing home admission. For some individuals, advance planning is not an option with which they were comfortable, or of which they were aware. Many people are surprised to learn that they can still do planning at the time of a nursing home admission and save substantial assets. Often, this savings can amount to about 40 percent of the assets for a single individual.

In this type of planning, with the help of an elder law attorney (sometimes called a Medicaid planning attorney), there is a transfer of assets at or around the time of nursing home admission and just prior to a Medicaid application. Because the assets are transferred within five years of a Medicaid application, the Medicaid agency assesses a penalty, which is a period of time in which Medicaid will not pay for nursing care. During that penalty time period, other non-gifted assets, which have been placed in special types of accounts or annuities, are used to pay for the nursing home care, so that care is uninterrupted. At the end of the penalty period, the individual is able to go directly on Medicaid, and has been able to legally set aside approximately 40 percent of their assets.

For married couples the savings can be much greater and, in many cases, can approach 100 percent. In these cases, there is often no transfer of assets outside of the couple, and therefore, there is no penalty period to serve before going on full Medicaid coverage.

Pooled Trust

Even if an individual does not make transfers of assets to family, there are also opportunities to increase one's quality of life when on Medicaid by placing assets in a Medicaid pooled payback trust. With final assets available prior to a Medicaid application, an individual can make an exempt transfer (non-penalized) to a pooled trust and go on Medicaid immediately. The money in the pooled trust can be used for an individual's supplemental needs during life (such as a private room, cable bills, hair styling, magazine subscriptions, transportation, special dinners, etc.), but any remaining funds must be paid over to either the state or the charity that runs the trust upon the individual's death.

Power of Attorney with Gifting Provision

One tool that is almost always necessary in this type of planning is a durable power of attorney with a broad gifting provision. The gifting provision allows your agent to execute and complete a Medicaid plan for you in the event that you are not mentally competent or physically able at the time that Medicaid planning becomes necessary. That type of power of attorney is usually discussed with all of the clients of Niehaus Law Office, regardless of their age.

The rules of Medicaid are very complex, and proper planning requires the assistance of an experienced professional. Dave Kammer has been with Niehaus Law Office since 2007, and has the knowledge and experience to help with your Medicaid planning needs. He has guided many families through the Medicaid planning and application process. Dave is a member of the National Academy of Elder Law Attorneys (NAELA) and ElderCounsel, which are national membership organizations that provide resources to strengthen the knowledge and tools that we use to do Medicaid planning.

If you find that nursing home care is foreseeable, or if a family member is already in a nursing home, we recommend that you set a meeting with Dave to discuss possible Medicaid plans.

For frequently asked questions about Medicaid, please see Elder Law / Nursing Home Medicaid Planning FAQs on our website.