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Protecting Your Assets From Nursing Home Expenses



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A common misconception about nursing homes is that you cannot give away or shelter any of your assets once you have been admitted into a nursing home. However, under many circumstances, with the proper guidance, you can shelter some of your assets for the benefit of your heirs, even *after* being admitted to a nursing home.

With average skilled nursing home costs in New York ranging from anywhere \$7,000 to \$12,000 per month, many people will rely on Medicaid to cover the cost of at least part of their nursing home stay.

Medicaid, however, is a “needs-based” welfare program, meaning that to be eligible for Medicaid, you must meet certain financial criteria. In short, skilled nursing home residents may have no more than \$14,850 in nonexempt assets to be eligible for Medicaid.

People entering nursing homes with more than \$14,850 in nonexempt assets are often told that they need to “spend down” their assets by paying their nursing home expenses out-of-pocket until their assets reach the Medicaid-eligible level. Many people would prefer to simply give their excess assets to their heirs, but laws exist that limit one’s ability to do so.

Effective February 8, 2006, new laws took effect which provide that if a person (or their spouse) has made a gift of their assets for less than fair market value during the five-year period prior to their application for Medicaid, they will be ineligible for Medicaid until a certain “penalty period” expires. The penalty period is

calculated as follows: for each \$9,252 that has been gifted, the person will be ineligible for Medicaid for one month. Thus, for example, if a person makes a gift (within the five years prior to a Medicaid application) of \$92,250, such person would not be eligible to receive Medicaid until 10 months later (\$92,250÷\$9,252). (This \$9,252 figure is the “regional rate” set by New York State for the Central New York Region for the year 2016).

Under the current laws, the penalty period does not begin until the individual seeking Medicaid coverage: 1) has been admitted into a skilled nursing facility; 2) has applied for Medicaid; and 3) is otherwise financially eligible for Medicaid. Under the previous laws, the penalty period began on the first day of the month after the gift was made, and so it was often the case that a penalty period would begin and end long before a nursing home even came into the picture. A common asset sheltering technique under the old laws was for one to gift away roughly one-half of his or her assets, while keeping the other half, which would be used to pay a nursing home during the ensuing penalty period (if nursing care became necessary). Unfortunately, because of changes to the Medicaid laws in 2006, such planning is no longer possible, because the penalty period now does not begin until the above three conditions are met. Essentially, this means that the penalty period does not start until you are in a nursing home and have applied to Medicaid and lack the funds to pay for care.

There are some asset transfers that do not result in the imposition of a penalty period. They include the transfers of assets to a spouse or a certified disabled child, or the transfer of one’s home to a “caregiver child” or to a sibling with an equity interest in the home. But for

many people, these types of transfers may not be applicable to their circumstances.

Otherwise, how can you protect your assets from being depleted by nursing home costs, *while assuring a source of payment for nursing home care*? The answer is by waiting until *after* you have entered (or you are about to enter) into a skilled nursing facility, and then utilizing the “Gift/Loan” planning technique. This asset-sheltering technique works as follows:

The person in the nursing home will transfer all of their assets to a third party, with approximately one-half of the transferred amount being considered a *gift* and the other half being considered a *loan* to be repaid. The nursing home resident then makes application for Medicaid, which application is intentionally denied because of the gift, resulting in the person being ineligible for Medicaid until the “penalty period” expires. During the penalty period, the person to whom the loan was made will repay the loan over the same number of months making up the penalty period. In addition, a certain portion of the person’s income will be paid to the nursing home, to help in paying the nursing home expenses during the penalty period. The end result is that a certain portion of the person’s assets (the portion that was gifted away) are forever “sheltered,” while the amount that was “loaned” is utilized to pay the nursing home during the penalty period.

This planning technique involves complex calculations, and should be undertaken only under the guidance of an experienced Elder Law attorney. If you are interested in learning more about asset sheltering techniques, please contact one of our Elder Law attorneys for an appointment.