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Medicaid Planning

Medicaid eligibility planning requires a thorough knowledge of the applicant's assets, income, health care requirements and legal documentation. Families must be (or become) aware of their loved one's circumstances in order to resolve the financial, legal and practical issues facing them at the point of long term care placement. Unfortunately, there are many myths about Medicaid which tend to build confusion and fear when they are told to the spouse or children seeking advice. Some of the Medicaid myths we hear can and should be debunked:

The nursing home doesn't take your house. If you are single, you will need to sell it and spend down the proceeds, and if you are married, the house is an exempt resource so long as the well spouse is living there. Special rules can apply in both cases to preserve some or all of the value of the home.

Living Trusts do not protect your assets from the required spend-down under Medicaid eligibility rules. Since you can always withdraw assets from the trust or revoke it altogether, the assets titled in the trust are "countable resources" for Medicaid purposes. In fact, transfers to or from a trust could cause an unwanted extension of the penalty period to 60 months from the date of such transfer.

Nominal transfers of assets do not automatically cause ineligibility for Medicaid for 5 years. Rather, there is a formula designed to penalize those who transfer assets by making them ineligible for nursing home Medicaid for the period of time they could have covered their costs had they not transferred the assets. The maximum period of ineligibility is currently 36 months (increased to 60 months if a trust was involved), no matter how much value was transferred. For example, a transfer of \$20,000 to children would make Dad ineligible for 5 months, not 5 years, under current regulations.

You do not have to disinherit a disabled loved one who is receiving Medicaid or other government benefits. You may leave some or all of your assets to the trustee of a special needs trust (SNT) under your last will and testament for your loved one. These trusts are designed to allow for distributions of funds to enhance the quality of life of your beneficiary without making them ineligible for their entitlements.

There are many complex rules, along with equally complicated exceptions to those rules, which could affect a family arranging long-term care for a spouse, parent, child or sibling. In addition, legislation has been passed that has altered the transfer of asset rules dramatically, such that caution is advised before taking such steps. Do not rely on word of mouth advice where so much is at stake. Rather, seek legal counsel experienced in elder law matters to obtain confidential and current information before taking irreversible steps now and, as the saying goes, “asking questions later.”

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