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FAMILY FINANCE

Joint assets jeopardize aid

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I'm writing for my parents. Their ages are 87 and 86, and they are healthy. They have about \$500,000 in cash assets. They don't want to turn their cash over to their child (in this case there is only one), and I can understand that. I'm worried because I understand that if one of them requires nursing home care, it will wipe out all but \$50,000 for the other to live on. Is this true, and if so, what can be done about it? - JG via e-mail

You're mistaken about the amount, but you've got the basic idea: Qualifying one of your parents for Medicaid nursing home benefits would impoverish the other.

A married person is ineligible for Medicaid nursing home benefits if his or her spouse has more than \$99,540 in assets and more than \$2,489 of monthly income. Anything in excess of those amounts must be spent on the care of the spouse in the nursing home.

If your parents own a house, it's an exempt asset as long as one of them lives there, regardless of its market value, says Bernard A. Krooks, an elder-care lawyer at Littman Krooks in Manhattan. But a single individual who owns a house worth more than \$500,000 now is ineligible for nursing home benefits. To qualify for Medicaid, that person would have to reduce his or her equity in the house by taking a reverse mortgage or a home equity loan.

First, a piece of advice: Your parents should make sure that someone they trust knows their wishes and has the legal authority to carry them out if they become incapacitated, Krooks says. Each needs a durable power of attorney, a health care proxy and a living will.

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In these legal documents, they can name each other, or you, to make financial and medical decisions on their behalf if necessary. In fact, adults of all ages should have these documents; as tragic headline cases periodically remind us, young people can become incapacitated, too.

Krooks says your parents' best Medicaid plan is a "spousal refusal." This strategy isn't implemented unless and until one of them needs nursing home care, and it doesn't involve transferring their assets to you. Here's how it works:

Let's say your father needed nursing home care. Your mother would transfer their money into her name. (She could do that as an owner of their jointly held accounts, or with a properly drafted power of attorney, if they have accounts in their individual names.) Then she would sign a letter refusing to spend her assets and income on his care. That "spousal refusal" would let her keep their \$500,000 without disqualifying him for Medicaid. The law allows "spousal refusal" in order to prevent exactly the situation you fear - namely, that obtaining Medicaid benefits for one spouse will wind up forcing the other to depend on public funds, too.

The downside: The law also gives Medicaid the right to sue people who sign a spousal refusal, to recover benefits it has paid. In some (but not all) cases, Medicaid is now exercising that right in New York City and in Nassau and Suffolk counties.

"Before any suit is filed, you'd get a letter saying, 'Your spouse is on Medicaid in a nursing home, and you have more than \$99,540. Send us a check for such and such an amount to cover benefits we have paid,'" Krooks says. Many people who receive such a letter respond by sending the amount requested rather than go to court. They don't realize there's a third option: "Call an elder-care lawyer to talk to Medicaid for you," Krooks says. "These cases are very negotiable. Medicaid takes into account the age and health of the well spouse, and often lets him or her keep more than \$99,540."

Send questions to Family Finance, Business Desk, Newsday, 235 Pinelawn Rd., Melville, NY 11747-4250, or e-mail to Bfamfin@aol.com. Include your age, income and a list of major assets. Letters and e-mails can't be answered personally.

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