

PLANNING FOR YOUR FUTURE

CAVEAT EMPTOR: Be careful who you listen to

By Bernard A. Krooks, Certified Elder Law Attorney

We have seen it many times. People who want to know why it is necessary to hire a lawyer to apply for Medicaid. Some have done research on the Internet, some have spoken to their neighbor in the nursing home or in the community, and some have read books written on the subject. A few people have even come to us with advice they were given by a Medicaid caseworker. Some of this advice may prove to be accurate. But, how will you know for sure?

In a recent case, the state was permitted to recover from the estate of a Medicaid recipient who was incorrectly advised by a Medicaid eligibility specialist that her home would be permanently exempt from estate recovery. The person giving the advice was not an elder law attorney. The woman's granddaughter was advised that if her grandmother signed a statement indicating her "intent to return home" from the nursing home, the grandmother's home would be exempt from Medicaid during her lifetime and from estate recovery after she died. The advice was incorrect, as the state was required to pursue recovery from her estate. After the grandmother died, the court ordered the family home to be sold and the sales proceeds went to the state instead of to the surviving family members. According to the court, the incorrect advice relied upon by the family could not be used to defeat Medicaid's right of recovery.



How can you protect yourself? By planning in advance, you can ensure that your assets, including the family home, are passed on to your loved ones. Here are some reasons why you can expect the advice received from an attorney to be accurate and some things to look for in an attorney who provides elder law and Medicaid advice:

1. An attorney is bound by ethical rules to stay current in the laws about which he is rendering advice. Others (such as your neighbor, a Medicaid caseworker, etc.) are not bound by any such ethical rules. They are merely passing along information that they may think is helpful but which may not be accurate. These ethical rules separate attorneys from others who may give out such advice.

2. An attorney is required to attend a minimum number of continuing legal education courses throughout the year. These courses highlight changes in the law, new cases that have been decided and any other developments that might impact the advice given.

3. An attorney will likely have well-established channels of communication through which current developments are distributed. For example, if the Department of Health issues a change in policy or a new policy, the attorney will probably be among the first to know since he will be on the Department of Health distribution list.

4. Work with an attorney who focuses his practice exclusively in the area of elder law. While a general practitioner may know some of the rules and regulations, the laws are constantly changing and you want to work with someone who devotes his entire practice to this area of the law. An elder law attorney is far more likely to have the necessary expertise to handle most elder law matters as well as remain current on changes in the law.

5. A Certified Elder Law Attorney (CELA) is an elder law attorney that has been certified by the National Elder Law Foundation as accredited by the American Bar Association. A CELA must pass a rigorous exam demonstrating knowledge in over 15 practice areas, including Medicaid and other government entitlements, estate planning, estate recovery, taxes, Medicare, guardianship, advance directives and health care planning. In addition, a CELA must devote a considerable portion of his practice to elder law matters. Also, a CELA must have been recommended by at least five of his peers. While an attorney who is not a CELA may possess the expertise necessary to handle an elder law matter, the fact that an attorney has become a CELA is one of many factors to be considered.

The moral of this story is that you need to be careful from whom you accept elder law planning advice. We have all worked hard to purchase and own our homes, which is typically a person's most valuable asset. It is well worth the investment to work with a seasoned elder law attorney to help protect your most cherished asset.

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