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Common Errors in Long-Term Care Planning

You can save yourself and your loved ones some difficulties by avoiding a few common missteps in planning for your long-term care needs.

During our discussions with clients, we learn about many misconceptions they have and previous errors they have made in their long-term care planning. I would like to share a few of those with you.

Believing Medicaid myths.

Relying on information from family members or friends, many people have a misunderstanding of how the Medicaid program works. Medicaid is a state program funded in part by the federal government. It is the only government program that pays for long-term care. Each state has its own Medicaid rules and regulations; including the District of Columbia, there are 51 Medicaid programs. In some states, Medicaid procedures even vary by county. Thus, it is very important for seniors and their families to consult with an experienced elder-law attorney familiar with the Medicaid program in the state and county in which the Medicaid application is to be filed.

Thinking it's too late to plan.

It is never too late to plan. In fact, it is possible to begin planning even after the individual has entered a nursing home, although you are always much better off if you plan ahead. Even if someone has already been diagnosed with Alzheimer's disease, they may be able to sign advance directives if the disease is in an early stage. If the disease has progressed, then planning may still be possible through a guardianship proceeding. With proper planning it is possible to protect a significant portion of the person's assets.

Giving away assets too early.

These assets belong to the senior or the person with disabilities. Don't put these individuals at risk by making premature gifts to family members. Premature gifts can also result in tax and Medicaid problems, particularly in light of changes to the Medicaid laws now in effect as the result of the federal Deficit Reduction Act of 2005.

> Don't repeat the mistakes others have made; instead, learn from them. Make sure you do what is necessary to protect your family's assets.

Ignoring exempt transfers.

Some transfers do not result in periods of Medicaid ineligibility. These include certain transfers to children with disabilities, caregiver children, some siblings, certain exempt trusts for persons with disabilities under the age of 65 and certain pooled trusts for persons with disabilities.

Failing to take advantage of spousal protections.

These protections include maximizing the Community Spouse Resource Allowance, exercising the right of "spousal refusal," purchasing exempt resources or converting countable resources to income.

Applying for Medicaid too early.

Applying for Medicaid within 5 years of making a gift can result in a period of ineligibility that will not start until the senior or person with disabilities is in the nursing home—with no funds available to pay for his or her care. While the rules are complex, there are still ways to protect assets even if a gift has been made within the 5-year look-back period.

Applying for Medicaid too late.

Putting this necessity off can result in spending funds that could have been protected by proper planning. While Medicaid is the payer of last resort, in many cases it must be considered in or-

Planning for long-term care should not be put off, but it's never too late to start planning.

der to maintain the quality of life of the well spouse and family.

Failing to keep good records.

This has become a critical issue in light of recent Medicaid changes. A Medicaid eligibility worker will thoroughly examine all Medicaid applications. The applicant should retain records to support all items listed on the application, document the applicant's assets as of the date of admission into the nursing home and verify the disposition of the applicant's assets for the entire look-back period.

Not considering long-term care insurance.

All those who are healthy and who can afford the premiums should consider long-term care insurance. By purchasing long-term care insurance, you may have more options available to you in the event of a chronic illness. If someone has already been diagnosed with Alzheimer's disease, it is too late for that person to purchase long-term care insurance. However, this should serve as a wake-up call to other family members that considering long-term care insurance is a vital part of your overall financial and estate plan.

Not getting expert help.

Medicaid asset protection planning is complicated. Most people will require this planning only once during their lives. Because a great deal is at stake, it is wise to consult an experienced, certified elder law attorney when long-term care is necessary. The attorneys' fees are an investment, not an expense.

Don't repeat the mistakes others have made; instead, learn from them. Make sure you do what is necessary to protect your family's assets. ■

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