Asset Protection Planning: Strategies for saving your money from nursing home expenses

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Asset protection planning concerns organizing your assets and affairs to guard against risk. There are many reasons to consider this type of planning, including an anticipated bankruptcy, large tax problem, or defending against a potential law suit.

However, asset protection planning generally arises in the context of planning, (as opposed to reacting,) for the financial realities associated with an elderly person who needs long term nursing home care and may not want to commit all of his or her assets to paying for that care out of pocket, which, in Massachusetts, may cost up to $12,000 per month.

Elder and estate planning typically focuses on drafting documents that fulfill your preferences about who should inherit what assets when you die. This may involve reviewing your assets and income, how funds are currently spent, and how you might want to live the next stage of your life, all in the context of preserving as much as possible. Asset protection planning, however; looks at those same issues, along with a close review of potential nursing home expenses. You will be asked, "If nursing home care is needed, do you want to remain private pay until those assets are fully spent, or would you prefer to take steps to preserve your assets even if it means divesting yourself of control in favor of paying less for the same services, so that Medicaid picks up the additional cost?"

Although Medicaid is basically a federal program, it is administered by each state separately and funded by both the state and federal government. Therefore; each state is entitled to enact its own rules and regulations regarding the administration of the Medicaid system, and this also includes recovery. Massachusetts Medicaid is administered by the Division of Medical Assistance known as MassHealth.

Some people prefer to have Medicaid pay for care as early as possible, while others have a more conservative tilt and accept Medicaid payments only when assets have been fully spent. Still others find a balance between the two extremes. Asset protection planning is most effective when considered and acted upon sooner rather than later, however; there are some spend-down strategies that work even once you are in a nursing home. The following issues should be considered:

1. **Countable Assets Limit**
   A nursing home resident is limited to only $2,000 in countable assets. Most assets are counted against this limit, except for your home, (in most instances,) one automobile, a prepaid funeral plan, and personal belongings, such as clothing and furniture. For 2012 the spouse of a nursing home resident is limited to about $113,500 in countable assets, (adjusted annually to reflect inflation.)

2. **Long Term Care Insurance**
   This may help protect your home so that even after death, your home need not be sold to reimburse MassHealth for care that was provided on the State's dime. Beware though, while regulations state that you need only carry a policy that pays $125/day toward nursing home care for two years, many people inadvertently violate the rules by accessing the policy to pay for home care before nursing home care is needed.

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3. **Transfer Penalty**
   Currently, gifts of property are penalized by a period of ineligibility for Medicaid benefits if they occur within 5 years of the application for benefits. However, penalties may be cured by the return of the gift. It should be noted that people often confuse gifts under the annual gift tax exemption limit, (currently $13,000,) with transfer penalties. These are separate and unrelated issues.

4. **Income**
   In most cases, a nursing home resident must pay all of their income to the facility, less $72.80 per month as a personal needs allowance, and anything paid towards health insurance. When there is a spouse or dependent children living at home, this figure may change. The spouse of a nursing home resident does not have to contribute any of their own income to the nursing home spouse's cost of care.

5. **Estate Recovery**
   When a nursing home resident dies, MassHealth has the right to recover from that resident's probate estate amounts it has paid for care. With proper planning, there is no estate, since the decedent only received coverage due to poverty. The only significant asset that many beneficiaries have is their home, and as noted above, long term care insurance may protect that risk.

There is no one-size-fits-all plan. Consultation with an attorney who focuses on asset protection planning is essential. As a cautionary tale: When you enter a nursing home, the facility encourages that a MassHealth application be completed. In fact, many facilities provide free assistance with form completion. Don't be pressured into signing or submitting an application without first considering whether there might be a spend-down opportunity.

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