Dispelling Estate Planning Myths



In the realm of estate planning, the following myths are rampant. You may have heard, or even believe, them yourself. As it is not possible to make proper decisions with incorrect information, it is important to dispel these myths.

Myth #1 – "If I need to go into a nursing home, Medicare will pay for my care.

This myth may very well be perpetuated by the fact that "Medicare" sounds very much like "Medicaid," which does pay benefits for nursing home care for qualified applicants. After a 3-day hospital admission, Medicare Part A will pay for medically necessary inpatient care in a skilled nursing facility. In this case, Medicare will pay for up to 100 days of skilled nursing care or rehabilitation services. The actual length of benefits could be much shorter than 100 days if those services are no longer required.

When Medicare benefits are available due to a qualifying hospital admission, Medicare pays 100% of the cost for the first 20 days, but only 80% of the cost for the next 80 days. Most Medicare recipients also have Medigap insurance, which will pay the balance not covered by Medicare. When Medicare benefits are exhausted, an alternative payment source is needed to pay for ongoing nursing home care, such as long-term care insurance benefits, private payment from income and assets, and/or Medicaid. For qualifying individuals, benefits from the Veterans Administration may also be available.

Myth #2 – "I can give away assets and then obtain Medicaid benefits to pay for my nursing home care."

When faced with a nursing home bill of approximately $13,000 per month, many people seek Medicaid benefits to pay for this care. To obtain Medicaid benefits, an asset limit must be met; therefore, assets valued above this limit must be reduced to the asset limit before benefits will be granted. To reach this asset limit, most people give away assets, usually to their children; however, with limited exceptions, Medicaid imposes a penalty when assets are given away within 5 years of the application. During the penalty period, the applicant cannot obtain any Medicaid benefits. There are planning options available at the time of nursing home admission, but in most cases, gifting will not be one of those options.

Myth #3 – "I can give away $10,000 to as many people as I want each year, but if I give more, then I have to pay gift tax."

This myth emanates from the federal gift tax system. There is currently no gift tax in Massachusetts. With respect to federal estate tax, in 2025, you may give up to $19,000 per year to as many people as you wish without having to file a federal gift tax return. The amount that can be gifted is stated incorrectly in the myth as most people remain unaware of the ongoing increases in the allowable gift amount, which is known as the annual gift tax exclusion. Also, in 2025, even if a federal gift tax return must be filed because more than $19,000 is given to one person that year, the giver of the gift will not pay any federal gift tax until they have gifted more than $13.99 million during their lifetime.

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All gifts that exceed the annual gift tax exclusion will reduce the federal estate tax exclusion available at the death of the giver of the gift. Thus, if you have $119,000, and you give all of it away in one year to one person, then you will need to file a federal gift tax return. You will not owe any gift tax because the gift itself does not exceed the federal lifetime threshold, but when you die, the amount of assets that you would have been allowed to pass without paying federal estate tax will be reduced by $100,000 (the amount of the gift that exceeded the annual exclusion amount).

Myth #4 – "When I die, if I have a valid Will, my estate does not have to go through probate."

Whether probate is needed is not based upon whether you have a Will; rather, it is based upon how your assets are owned when you die. The assets in your probate estate are those that, when you pass away, are held in your name alone and do not have a designated beneficiary. If you leave probate assets, then for your Will to "speak," a probate estate must be opened. To avoid probate, you would need to have all assets held jointly, in a trust, or with a designated beneficiary.

Although the above myths remain popular, they are not accurate. The best estate planning legal advice comes from a qualified estate planning attorney, who will explain the options that best suit your unique situation and help you choose the best option for you based on correct information.

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