DELL BURTIS LAW

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WHAT IS NURSING HOME/MEDICAID PLANNING?

For many of our clients, the cost of long-term care, including nursing home, in-home and assisted living care, is a serious concern especially as the cost continues to increase. At least 70% of people over age 65 will require some type of long-term care ("LTC") during their lives[1]. These costs can severely impact a client's immediate financial stability and the client's plan to leave a legacy to his or her family.

Can plans be put in place to help a client ensure that the client can take care of LTC needs and also preserve assets for the family? The answer is almost always, YES. There are three sources of payment for long-term care expenses: Self-Pay, LTC-Support Products and Medicaid.

1. The Self-Pay option is straight-forward. The client pays the LTC expenses with the client's own income and assets. If the nursing home stay will be short, this option may be attractive because it requires little planning and does not tie up any of the client's assets. However, if the nursing home stay is indefinite, then savings and other assets will steadily decline until there is little or nothing left.

2. LTC-Support Products include long-term care insurance, life insurance policies with LTC riders, linked benefits and other related products. Clients who have LTC-Support Products have more options for asset protection, primarily because they pay only a portion or none of the LTC expense and have more flexibility to make gifts and preserve assets. We encourage our clients to consider LTC-Support Products and to consult with their financial advisors and insurance professional about them. For some clients, however, those products are not an option.

3. Medicaid. Medicaid pays for nursing home or certain other LTC services when the client's assets are depleted. Medicaid planning involves working within the Medicaid rules to preserve some of the client's assets while also qualifying for Medicaid. With Medicaid planning, a basic principal to remember is that if the client has access to a resource or to an asset, it is considered "available" and will have to be spent before Medicaid will cover the LTC cost.

There are two distinct types of Medicaid planning: *Pre-Planning* and *Crisis Planning*. *Pre-Planning* is for a client who has no immediate need for LTC services and does not anticipate needing LTC within five years. *Crisis Planning* is for a client who is in the nursing home now or who will be there relatively soon.

Some of the options for **Pre-Planning** include:

Outright gifting. The client makes a gift directly to beneficiaries, often family members. However, careful planning must be done, since gifts cause Medicaid ineligibility if the client applies for Medicaid within five years of making the gift. Another issue to carefully consider is that, once a gift has

[1] http://longtermcare.gov/the-basics/

been given to, for example, a family member, that gift is subject to that family member's creditors or other claimants.

Gifting to an Asset Protection Trust. The client makes a gift to an irrevocable, asset protection trust. The client may retain the income from the trust (although we prefer that they don't do so, the client often likes to keep the income). The trust can be a grantor-trust so that there is a step-up in basis upon the client's death and it can allow the client's children or other beneficiaries to withdraw assets from the trust under certain circumstances. Upon the client's death, the trust assets are distributed to the client's beneficiaries. Careful planning must be done to determine the assets that can be gifted to the trust and the assets that will remain outside the trust, as Medicaid ineligibility will result when the trust is funded. Ideally, the assets in the trust will not have to be spent to qualify for Medicaid.

Gift of Real Estate, Retaining a Life Estate. Used to preserve the family home, this option allows the owner of real estate to transfer that property to others, usually family members, while keeping the right to reside in the home for the remainder of the client's life.

Options for **Crisis Planning**. These options are similar to the Pre-Planning except that immediately after the client makes a gift, which can be in any of the forms mentioned above, a Medicaid application is filed. The ineligibility resulting from the gift is calculated and plans are made to pay for the nursing home care during the ineligibility period. This planning must be done carefully and precisely. Once the ineligibility period (sometimes called a "penalty period") expires, the client is eligible Medicaid.

Crisis Planning is available to clients who may not have enough assets for Pre-Planning and may not be able to pay for five years of nursing home care; however, they can still preserve some of their assets. For example, a client with assets of $100,000 who is already in a nursing home would still be able to gift approximately $50,000 of his assets to his family, with the remaining $50,000 being used to pay for the nursing home care during the ineligibility period resulting from the gift.

As long-term care costs continue to increase, it is important to remember that there are almost always options for preserving your assets using Pre-Planning or Crisis Planning. If you would like more information, please contact us for an appointment, or you may attend one of our seminars listed below.

Spring Seminar Schedule

Please join us for our *Dell Burtis Law Continuing Education Series*. These one-hour, complimentary small group sessions are held in our conference room and address a variety of estate planning topics. If you would like to attend, please RSVP by phone or through our website, as space is limited.

The topics are:

Avoiding Probate
February 25, 2014 5:00 pm

Legal Concepts for Women
March 19, 2014 2:00 pm

Gifting: Pros and Cons
May 29, 2014 10:00 am

Rules for Nursing Home Medicaid – Dealing with the 5 year lookback period
April 16, 2014 2:00 pm

Long Term Care/Nursing Home Planning Tools for Developing a Plan
May 6, 2014 5:00 pm