

## **Crisis Medicaid Planning: “Keeping it in the Family”**

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“I thought we’d have to spend almost all of our money before Medicaid would pay Robert’s nursing home bills...you mean that isn’t true?” Mabel asked.<sup>1</sup> Her husband, Robert, had suffered a stroke three weeks ago and was not at present mentally competent. He was about to be transferred from the hospital to a local nursing home for rehabilitation and might not be able to return home again. While Mabel knew that this was the best thing for Robert, after 55 years of marriage she could hardly imagine the two of them not being together any more.

Mabel was doing her best to make this a smooth transition for Robert, but she was feeling overwhelmed wondering how they were going to pay for Robert’s care. She was shocked when she heard from the hospital discharge planner that once Medicare stopped paying for Robert’s care (whenever Robert no longer required “skilled nursing care,” but in any event no more than 100 days after his admission to the nursing home) they would have to start pay the nursing home \$8,000 a month.<sup>2</sup> And they would continue paying until she and Robert had spent down much of their lifetime of savings to qualify for Medicaid.

Mabel and Robert had worked hard for many years and had been careful about their expenses, so that they had accumulated about \$280,000 (their bank accounts and CDs, some stock, the cash value of their life insurance, and their IRAs), plus their home in Erie. Robert had a monthly pension of \$700 from his former job as an electrician, plus his Social Security of \$1,100 a month. Mabel, who had only worked outside the home after the children had grown up, received \$600 a month in Social Security.

Fortunately the hospital discharge planner had suggested to Mabel that she contact an elder law attorney to see if there was anything that could be done to help them, and Mabel called my office. When we met with her I explained that after the changes in the Medicaid laws a few years ago, it had become more complicated for middle-class seniors in their situation to protect their life-savings from the cost of long-term care, but with the right assistance a lot could still be done.

I explained that in their case, because Mabel was the “community spouse” (the spouse remaining at home), her IRA would be considered an “exempt asset”

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<sup>1</sup> While the names have been changed to protect client confidentiality, the facts presented here are based on actual client cases.

<sup>2</sup> As of the time of this writing, January, 2014, the cost of nursing-home care in northwest Pennsylvania ranges from \$70,000 to over \$120,000 per year (and averages over \$107,000 statewide).

by Medicaid and so would not be at risk to pay for Robert's long-term care. In addition, Mabel could keep approximately \$117,000 of their other assets as her protected amount, which the Medicaid rules permit the "community spouse" to retain to live on.

Their house in which she was living would also be exempt, but because it was in both their names, it was at risk to a Medicaid "estate recovery" claim if Mabel died first. Fortunately, Robert had a financial power of attorney that gave Mabel the right to make "unlimited gifts," and so we would be able to transfer the house into Mabel's name alone in order to protect the house even if that happened. (We would also prepare a new Will for Mabel to disinherit Robert and have Mabel remove Robert as a beneficiary on her IRA, as otherwise if she died first the assets we had protected for Mabel would simply go back to Robert and make him ineligible for Medicaid until they had all been spent down.)

This still left about \$130,000 (Robert's \$75,000 IRA and approximately \$58,000 of their other assets) that would have to be spent down on Robert's care before he would be eligible for Medicaid. However, I told Mabel in her situation I thought we could help her protect nearly all of the remaining \$130,000 and get Robert eligible for Medicaid within a couple of months.

We would first have Mabel trade in her older car and purchase a new one (good enough to last the rest of her life), as well as purchase some household items she needed (including a new washer and dryer to replace the ones she had that were about to give out).

The remaining funds, approximately \$100,000, would be used to purchase an immediate annuity that would pay Mabel, who was 77, about \$1,700 a month for the next five years. Such annuities are permitted in Pennsylvania as long as very specific requirements are met, including naming the Pennsylvania Department of Public Welfare as the remainder beneficiary in first place for any remaining annuity payments if Mabel died before the five-year term was complete, up to the total amount of Medicaid paid out on behalf of the institutionalized spouse.

Once the \$130,000 of excess assets were spent down and the Medicaid-compliant annuity purchased, Robert would be eligible for Medicaid and Mabel would have a much higher monthly income, which she could save or use for whatever they needed, for instance to make some improvements around their home (such as making their bathroom wheelchair and walker accessible) in the event Robert was able to return home.

I explained to Mabel that while we can never guarantee any result, especially where Medicaid is concerned, we had been successful with our other clients using this strategy, and I assured Mabel we would not only make sure that all the Medicaid requirements were met, but we would act as her advocate and stay with her while her Medicaid application was processed, answering any

questions that the County Assistance Office might have, and appealing any potential initial denial of eligibility.

Mabel was also very happy to learn that if Robert's condition improved enough so that he did not need 24-hour care, he would likely qualify for the Medicaid PDA Waiver program to provide 30 to 40 hours a week of healthcare in their home to supplement the care Mabel could provide and allow Robert to remain in his home rather than in the nursing home. And all the steps we would have Mabel take to qualify Robert for Medicaid in the nursing home would also qualify him for Medicaid for "in-home" care.

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Working with the long-term care system we have in this country, seniors and their families need to understand that despite the restrictions in the Medicaid law, it is often not too late to protect part or your remaining assets, even when facing an immediate crisis and with no advance planning. Whether you are 75 years old and living in your own home, or have an 85-year-old spouse in a nursing home – there are steps you can be taking now to preserve a significant portion of your life savings otherwise at risk of being spent on your nursing care. But it is more true than ever that "time works against you." *Every day of delay in a crisis can result in \$250 or more of irretrievable loss*, so it is important to contact a knowledgeable and experienced elder law attorney for advice sooner rather than later.

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*The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney.*

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