

Paying for a Nursing Home: Medicaid (Part 7 of 12) Planning for Long-Term Care – Better Late than Never

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A few weeks ago we got a call from Alice,* whose neighbor had recommended she contact us after her 85-year old mother entered a nursing home. *And then she said something that could almost be word-for-word what we have heard other people say repeatedly over the years:* She said she wished she had learned about this earlier because “Now it’s too late for my mother to do anything to protect her life savings. We should have done something about this years ago.”

While not wanting to downplay the benefits of planning ahead, I was able to reassure Alice that just because her mother was now in a nursing home did not mean that it was too late to do anything. *She could still protect a significant portion of her life savings from the costs of long-term care and in the process accelerate her eligibility for Medicaid.* I told her that many people mistakenly believe that if they transfer any of their assets, they have to wait three to five years before they can be eligible for Medicaid.

The fact is that the Medicaid laws are written to help people. Even when someone is already in a nursing home, Medicaid does not require that his or her entire life savings be exhausted before that person can qualify for Medicaid. The laws and regulations are very specific and can be quite complex, but I tell my clients that by following the law carefully, we can typically protect from 40% to 60% of a client’s remaining life savings with a single person in a nursing home, and 70% to 90% when there’s a married couple with one spouse in a nursing home.

However, there were several more questions I needed to ask Alice before I could be certain I could help them.

1. Was her mother mentally competent?

Alice said she was not, that this was why her mother had to enter the nursing home: her Alzheimer’s had advanced to the point that she was often up during the night, had once been found outside by a neighbor wandering along the side of the street disoriented, and Alice simply could no longer provide her mother the care she needed at home.

2. In that case, did her mother have a Durable Financial Power of Attorney?

Yes, her mother did have such a document, one that had been prepared by her long-time attorney several years ago, that appointed Alice and Alice’s brother Bill as her agents.

3. Finally, did that Power of Attorney specifically authorize her agents to make unlimited gifts?

Fortunately, her Power of Attorney also included the necessary “unlimited gifting” language. Without a Power of Attorney, or with a Power of Attorney that did not authorize unlimited gifting, I would have had to tell Alice that there would be little she could do to protect any of her mother’s remaining assets.

What I stress with my clients is that there are advantages to planning for long-term care early. For clients who are still relatively young and in good health (someone like Alice, for example), their single most important planning step is to get in place a good set of estate and disability planning documents – that is, a Will, Financial Power of Attorney, Healthcare Power of Attorney, and Advance Medical Directive (or “Living Will”). Also, long-term care insurance is something to consider as a way of planning for the future. Even for those who do not qualify for, cannot afford, or simply do not choose to purchase long-term care insurance, there are some gifting options they may want to consider. (For example, it is possible to transfer an interest in their home in a way that will not affect their standard of living and will have minimal effect on their options down the road, while protecting the home from a potential claim by the State Medicaid Office for 100% of the home’s value).

But, as Alice now knows, even if a loved one is already in a nursing home and does not have long-term care insurance, it is still not too late to protect a significant portion of the remaining life savings – provided that the nursing home resident is still mentally competent or has a properly drafted Durable Financial Power of Attorney.

* Names here are fictitious, but the situations are based on actual clients.

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.

Note: *After the changes in the Medicaid law in 2006, it is more true than ever that “time works against you” when planning for long-term care. It is important that families who have a spouse, parent or other loved one needing long-term nursing care contact a knowledgeable and experienced elder law attorney for advice as soon as possible. While ideally this should be done prior to admission to a nursing home, families need to realize that even after the 2006 changes to the Medicaid law, there remain opportunities for seniors to protect a significant portion of their life savings, even when facing an immediate crisis, with no advance planning. But since every day of delay in a crisis can result in \$250 or more of irretrievable loss, don’t delay in seeking advice.*

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** Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.*