PROTECT YOUR ASSETS FROM A NURSING HOME

3/29/19

Special Report: Nursing Home Protection

Stonehearth Capital Management is an **independent fiduciary,** financial advisory firm helping families with their finances for over 35 years, *managing risks* and *identifying opportunities.*

WWW.STONEHEARTHCAPITAL.COM

199 ROSEWOOD DRIVE, SUITE 200 • DANVERS, MA 01923 • 978.624.3000

Nursing Home Protection

HOW TO PROTECT YOUR ASSETS FROM A NURSING HOME

Medicaid is one of the few resources available to help pay for long term care services, also known as nursing home care. It is a joint venture between the federal government and the states and is available to those families and individuals with limited resources. As a result of Medicaid's joint venture status, some of the eligibility requirements, rules, and regulations vary between states. Therefore, some strategies that work in one state may not work in another. My goal here is to share with you some of the more popular strategies. I have structured this paper in such a way that you can quickly reference your particular situation and identify strategies to discuss with your attorney. The rules change rapidly, so please do not attempt to implement any of the strategies discussed here without the assistance of an elder law attorney within your state. Otherwise, you may be putting someone's life savings at risk. None of the information below should be considered advice. Constructing a Medicaid plan should also be done with an eye toward estate planning and income tax goals.

There are two options when it comes to paying for nursing home care. The first is to privately pay. This means you use your own income and/or assets to pay for your care. This option provides the greatest amount of choice regarding how, when, and where you receive care. The drawback is that you will burn through assets rather quickly. The second option is to have Medicaid pay for some, or all, of your care. The primary benefit is that when you qualify for Medicaid benefits you, and your spouse (if applicable), can stop spending down your assets. Another benefit is that your monthly nursing home rate is discounted compared to a resident who is privately paying for their care.

MEDICAID *INCOME* ELIGIBILITY REQUIREMENTS

Let's take a look at the eligibility requirements for Medicaid benefits. There are two primary areas that Medicaid looks at in order to determine if you are eligible for benefits. The first is the Medicaid applicant's income. Most states have charts that illustrate the maximum income limits to meet eligibility requirements, however, don't fret if your income is over the limit because they typically back out a handful of expenses making it easier to qualify. As a general rule, if the nursing home costs exceed your income then you stand a good chance of being eligible. A very important and beneficial fact for married couples is that the healthy spouse's income is protected and is not considered when someone is trying to meet Medicaid income requirements. Also, the healthy spouse is not required to use their income to pay for the Medicaid recipients care.

MEDICAID *ASSET* ELIGIBILITY REQUIREMENTS

Asset eligibility requirements are a bit more complex, but it is also where most of Medicaid planning opportunities exist. Unlike income eligibility requirements, asset eligibility requirements look at both spouses' assets. In 2019, the Medicaid applicant is only allowed to have up to $2,000 in "countable" assets. If married, the healthy spouse is allowed to keep $126,420 (2019) in "countable assets."[1] Most assets are countable, but there are a handful of assets that are excluded such as:

- Primary Residence (in most instances)
- One automobile
- Prepaid funeral expenses
- Personal belongings (clothing, jewelry and furniture)
- Small amount of life insurance

One easy way to meet the asset eligibility requirements for Medicaid would simple be to just give away your assets to a non-spouse or an irrevocable trust (living trusts or revocable trusts do not work for Medicaid planning) to get below the $2,000 limit. Unfortunately, it is not that simple. Medicaid will ask you on the application if you have made any gifts or transfers within the last five years (lookback period). If so, they will apply a penalty period based on the amount that was gifted. During this period, you will not be able to receive any Medicaid benefits. The penalty period does not begin until you would otherwise qualify for benefits. It is important to note that transfers between spouses are not subject to the lookback period or penalty (disqualifying) period. The challenge here is that you have to give away assets five years before you apply for Medicaid benefits and most of us don't know when that will be. If you have more assets than you need to fund your retirement, then it might make sense to start gifting the excess now. If you need all of your money, then you may not have this luxury, and will need to rely more on crisis planning if/when you need care.

MEDICAID *ESTATE RECOVERY*

An important area that Medicaid recipients or their families should plan for falls within the area more commonly referred to as "estate recovery." Estate recovery is when Medicaid tries to recover their expenses after the Medicaid recipient passes away. Most states accomplish this by obtaining a reimbursement from anything that is probated. So the key to avoiding estate recovery is to avoid probate. Not every state defines "estate" the same. Some states use an expanded definition of someone's estate, which means they go after non-probated assets as well. Here in Massachusetts, we currently use the more restrictive definition focusing just on probated assets.

STRATEGIES

Remember that the goal is to qualify for Medicaid benefits and to do so, you need to meet both the income and the asset eligibility requirements. Next, you want to limit Medicaid's ability to recover the expenses paid.

STRATEGIES TO MEET *INCOME* REQUIREMENTS

- *Single/Widower:*

[1] https://www.elderlawanswers.com/

- Not a lot you can do here.

- *Married:*
  - The healthy spouse's income is *NOT* part of the equation when it comes to qualifying for Medicaid benefits. Therefore, any income that can be shifted to the healthy spouse should be explored.
  - Each state recognizes that the healthy spouse will continue to have their own living expenses and as a result, the healthy spouse is allowed to receive a minimum spousal needs allowance. Between 7/1/2018 and 6/30/2019 the minimum is $2,057.50 per month.[2] If the healthy spouse's monthly income is below $2,057.50, then he/she is allowed to keep some of the Medicaid recipient's income to meet this minimum. For example, if John's (healthy spouse) monthly income is $1,500 then he can keep an additional $557.50 from Jane's income (Medicaid recipient spouse).
  - Medicaid agents have some discretion. Filing a hearing to plead your case as to why the healthy spouse deserves to keep even more of the Medicaid recipient's income may be appropriate if the healthy spouse has high living expenses. For example, if John has a mortgage on the house for $2,500 per month. John may be awarded more of Jane's income to help with living expenses.

STRATEGIES TO MEET *ASSET* REQUIREMENTS

- *Single/Widower:*
  - Primary Residence:
    - In Massachusetts, up to $878,000 (2019) of equity is "noncountable."[3] As a result, the home is rarely a hurdle when applying for Medicaid benefits. However, a lien may be placed on the property after becoming eligible for Medicaid benefits so they can recover their expenses.
    - *Consideration:* It is usually not a good idea to sell the house because it turns a "noncountable" asset into a "countable" asset.
    - *Consideration:* Many attorneys suggest that the Medicaid applicant fill out a form indicating that they "intend" to return home. This may prevent Medicaid from forcing a sale of the home.
  - Other Assets:
    - Medicaid recipients are allowed to keep up to $2,000 (2019) in assets. Below are some ways to spend down countable assets:
      - Upgrade the car (please no Ferrari)
      - Prepay funeral expenses

[2] *2019 Medicaid Numbers for Nursing Home Care* [PDF]. (n.d.). Longmeadow: Law Office of John L. Roberts.
[3] *2019 Medicaid Numbers for Nursing Home Care* [PDF]. (n.d.). Longmeadow: Law Office of John L. Roberts.

- Time for home renovations
- Buy that 60 inch flat screen TV
- Pay off debt
- *Crisis Planning:* Consider making a disqualifying gift to an irrevocable trust, or somebody (maybe your kids), along with an annuity that creates enough income to cover the penalty period.
- *Crisis Planning*: Consider contributing assets to a pooled trust. Some states allow this transfer without triggering a disqualifying transfer/gift.

- *Married*
  - Primary Residence:
    - The home is "noncountable." For this reason, the home is rarely a hurdle when applying for Medicaid benefits.
  - Other Assets:
    - The Medicaid applicant is allowed to keep up to $2,000 (2019) in assets and the healthy spouse is allowed to keep up to $126,420 (2019) in assets. Combined this totals $128,420 (2019). If you have more in assets then consider the following ways to spend down assets:
      - Upgrade the car (please no Ferrari)
      - Prepay funeral expenses
      - Time for home renovations
      - Buy that 60 inch flat screen TV
      - Pay off debt
      - Five years in advance of applying for benefits, consider making a disqualifying gift to an irrevocable trust, or somebody (other than your spouse). This will be subject to a penalty period if done within the last 5 years.
      - *Crisis Planning:* Healthy spouses are allowed to keep 100% of their income. Consider using some of the excess to purchase an annuity, turning assets into income for the healthy spouse.
      - Schedule a hearing with a Medicaid agent if the healthy spouse feels that they need additional assets beyond the $126,420 (2019) to meet living expenses. Medicaid agents have some discretion.
  - Other Considerations:
    - The healthy spouse should consider changing the beneficiaries on accounts, life insurance and their will to someone other than the Medicaid recipient. In many states it may be impossible to completely disinherit a surviving spouse, so this too must be addressed.

  - If the healthy spouse prefers to keep the Medicaid recipient as the beneficiary, then consider updating the healthy spouse's will to include a testamentary trust to benefit the Medicaid recipient spouse. The assets in the testamentary trust are an excluded asset.

STRATEGIES TO REDUCE / ELIMATE *ESTATE RECOVERY*

- *Single/Widower:*
  - Primary Residence:
    - If left in the Medicaid recipient's sole name, the state will likely recover their expenses because assets in your sole name will likely be probated after you pass. Avoiding probate will reduce the chances Medicaid will recover their expenses in those states that only focus on probated assets. Some ideas/strategies to potentially reduce, or eliminate recovery include:
      - Transfer the home to a child who moved into the home and provided care to that parent, which kept the parent out of the nursing home for a period of two years. This is not considered a disqualifying transfer.
      - If the home is going to be subject to estate recover, consider renting the property to generate income that can help defray some of the cost of the nursing home. This means Medicaid would be spending less, hence recovering less.
      - If the Medicaid recipient has a long term care insurance policy that has benefits of at least $125/day for a period of two years, then Medicaid will not pursue recovery.
      - Five years in advance of applying for benefits consider gifting the property to your intended heirs while maintaining a *life estate* which gives you the legal right to live in the property for the rest of your life. While still subject to liability risks (from the kids), these potential liabilities are deferred until after you either sell the house or pass away (i.e. you will not be kicked out of your home).
      - Five years in advance of applying for benefits consider gifting the property to an irrevocable trust (Medicaid trust). This will help avoid your probate estate. Over the last couple of years, Medicaid has been poking holes in plans including irrevocable trusts so it is important to revisit with your elder law attorney to ensure the structure is still appropriate.
  - Other Assets:
    - Remember, the Medicaid recipient can only keep up to $2,000 (2019), so there is not much that can be done here.
- *Married:*
  - Primary Residence:

- Consider transferring 100% of the ownership of the property to the healthy spouse. Remember, transfers to spouses are not a disqualifying transfer. For states that focus only on probated assets, this will prevent the property from flowing through the Medicaid recipient's probated estate when he/she passes. In those states that use an expanded definition beyond just probated assets, then this strategy may not be as effective.

  - Other Assets:

    - Consider transferring 100% of the ownership of other assets to the healthy spouse. Remember transfers to spouses are not a disqualifying transfer. For example, change joint account(s) to an individual account in the healthy spouse's name.

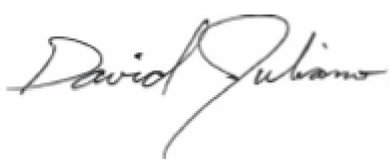
NEXT STEPS

This document is designed to address some of the more popular strategies. It is not a complete listing of all available strategies. As you can see from the ideas shared above, there are still legal ways to protect your family's assets. Please remember that nothing in this document is a recommendation for you and your situation. Recommendations pertaining to this subject matter should come from a qualified elder law attorney who specializes in this area. The rules and regulations change too quickly to rely on anyone not qualified to give such advice. Also, remember that certain Medicaid planning strategies may work counter to your estate planning and/or income tax goals. These need to be considered in the totality of the decision making process. Use this document to help get the conversation started.

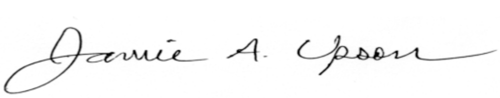
As always, if you have any questions please lean on us here at Stonehearth Capital Management.

We are here to help.

Sincerely,



David Juliano CLU, ChFC, AIF, RICP
Senior Financial Advisor
David@stonehearthcapital.com



Jamie A. Upson, CFP®, CMFC, AAMS
President & CEO
Jamie@stonehearthcapital.com

Footnotes, disclosures, and sources:

Stonehearth Capital Management, LLC is a Registered Investment Advisor. Registration does not imply a certain level of skill or training.

Opinions, estimates, forecasts, and statements of financial market trends that are based on current market conditions constitute our judgment and are subject to change without notice.

This material is for information purposes only and is not intended as an offer or solicitation with respect to the purchase or sale of any security.

Investing involves risk including the potential loss of principal. No investment strategy can guarantee a profit or protect against loss in periods of declining values.

Fixed-income investments are subject to various risks including changes in interest rates, credit quality, inflation risk, market valuations, prepayments, corporate events, tax ramifications, and other factors.

Opinions expressed are not intended as investment advice or to predict future performance.

Past performance does not guarantee future results.

Consult your financial professional before making any investment decision.

Opinions expressed are subject to change without notice and are not intended as investment advice or to predict future performance.

All information is believed to be from reliable sources; however, we make no representation as to its completeness or accuracy. Please consult your financial advisor for further information.

These views should not be construed as investment advice. Neither the named representative nor the named Broker/Dealer or Investment Advisor gives tax or legal advice.