

Ask An Elder Law Attorney

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NEW MEDICAID LAW REQUIRES YOU TO PLAN AHEAD!

The biggest problem that we as Elder Law Attorneys have is convincing clients to plan ahead as early as possible to address their need for long term care issues. And certainly at the appropriate time, children need to be involved in this planning process or at least need to understand what plans Mom and Dad have made for financing any stay in a long-term care facility such as assisted living or a nursing home. The children need comfort that Mom and Dad have addressed this issue from the standpoint of how the bills for an extended stay in an assisted living facility or nursing home will be paid. Do Mom and Dad have sufficient assets for private pay? Do Mom and Dad have long-term care insurance? Do they simply think they will be able to rely on Medicaid? The scenario that we have is Mom and Dad usually being brought to our office by a son or daughter to do emergency planning to get either Mom or Dad qualified for Medicaid in an attempt to try to save the family home and a few dollars. The problem with this type of planning is that there are usually costs associated with it and I don't mean attorney fees. Typically the attorney cannot protect assets the family wants protected in these situations.

Why? Because they have waited too late!

Now, it is about to become even harder to save the family home. The U.S. House of Representatives is currently scheduled to vote on a bill which will make it extremely difficult if not impossible to save any assets of Mom and Dad from a stay in a nursing facility unless their planning is done very early on, i.e., I mean over five years before Mom and Dad plan on qualifying for Medicaid. If this bill takes effect and there is a good chance that it will, then it will be extremely difficult, if not impossible, to protect the assets of many of the clients who come to see me in my role as an Elder Law Attorney. The reason is that under this new law, assuming that it is passed, all gifts made by an applicant for Medicaid in the previous (5) five years prior to filing the Medicaid application will be added together and a penalty will be assessed. The penalty will run from the date of the Medicaid application forward in time. So let's look at an example and assume that we're now operating under the new law. Let's say..... I signed over my house to my children and I did it by deed four years ago. Let's say the house was valued at \$80,000 and assume for this example that it is the only gift which I have made in the last five years. Even though I had no intention of ever seeking to qualify for Medicaid since

four years ago a nursing home stay was the farthest thing from my mind, once I have filed the Medicaid application, the Medicaid folks will penalize me for that gift made four years ago of that \$80,000 house by making me wait almost twenty months before they will allow me to qualify for Medicaid after I have filed the Medicaid application. Therefore, and I cannot stress this enough, you must plan ahead now if you expect to ever protect any asset if you intend to apply for Medicaid in order to pay for any long-term care costs incurred in a nursing home stay. Even if a nursing home stay is a long way away in your mind, even if you have long-term care insurance, even if you think that you are in a situation where you will be able to private pay for a nursing home stay, and for many other reasons, it is in your best interest to visit with an Elder Law Attorney and have a consultation. Even if you have to pay a consultation fee, because in the long run, the hour or two spent conversing with an Elder Law Attorney who understands these issues and the qualifying process for Medicaid and is aware of long-term care costs and all of the attendant issues that go along with such a stay, it should be money well spent to assist you in developing a plan not only to give you and your spouse peace of mind, but also to put your children at ease that you have a plan in place to address these types of issues.

DON'T WAIT! DON'T WAIT! DON'T WAIT!

If you have any questions on this topic or any other Elder Law related topics please visit www.thefieldslawfirm.com and browse through the free archived newsletters on important topics such as Caring for a Nursing Home Spouse, Long-Term Care Strategies, Powers of Attorney, etc. You can also **sign up for a free monthly newsletter** on topics such as V.A. Benefits, Legal Documents You Should Not Be Without, Special Needs Trusts, Conservatorships, and Passing on an Inheritance to Your Children.