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NURSING HOME PROTECTION

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Protect Your Assets from a Nursing Home

As investment executives who specialize in helping our clients meet their financial goals, we understand that you may have questions about the areas you need to focus on during this phase in your life. This special report presents strategies on how to protect your assets from a nursing home.

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Nursing Home Protection

HOW TO PROTECT YOUR ASSETS FROM A NURSING HOME

PAYING FOR NURSING HOME CARE

There are three 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 all of your care. This option provides the greatest amount of choice regarding how and where you receive care. The drawback is that you will burn through assets rather quickly. The second option is to purchase a long term care insurance policy. This must be done while you are healthy. Depending upon the terms of the policy, this will typically supplement private payments using your income and/or assets. The third option is to have Medicaid help pay for some of your care. For those who qualify for benefits, you may still need to use your income to cover nursing home care, however, you can stop spending down your assets. The balance of this paper will focus on option three, what many people refer to as Medicaid planning.

The goal of Medicaid is to make resources available to those individuals and families with limited resources. Medicaid is one of the few resources available today that helps pay for nursing home care. Medicaid is a joint venture between the federal government and each state. This means that some of the eligibility requirements, rules, and regulations may vary from one state to the next. As a result, strategies that work in one state may not work in other states.

My goal here is to share with you some of the more popular strategies to preserve your assets from a nursing home. The rules change rapidly, so please do not attempt to implement any of the strategies discussed here without the assistance of someone qualified within your state to guide you through your options. An elder law attorney is usually a good place to begin.

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 many states allow you to back out certain 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 qualifying.

- **Strategies to meet the *income* requirements:**
  - **Single/Widower:**
    - 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.[1] The healthy spouse is *NOT* required to use any of their income to pay for the Medicaid recipient's care.
    - Each state recognizes that the healthy spouse will continue to have their own living expenses. As a result, the healthy spouse is allowed to receive a minimum spousal needs allowance. In 2017, the minimum is $2,002 per month. So if the healthy spouse's monthly income is below $2,002,

then he/she is allowed to keep some of the Medicaid recipient's income to meet the minimum. For example, if John's monthly income is $1,500 then he can keep an additional $502 from Jane's income.[2]

- 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 $2,500/month mortgage payment then he may be allowed to keep even more of Jane's income.

MEDICAID *ASSET* ELIGIBILITY REQUIREMENTS

The second area that Medicaid looks at to determine eligibility requirements are your assets. These 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 2017, the Medicaid applicant is allowed to keep up to $2,000 in "countable" assets. If married, the healthy spouse is allowed to keep $120,900 in "countable assets." Most assets are countable, but there are a handful of assets that are excluded.[3] See the chart to the right for a list of excluded assets.

Excluded Assets:

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

One easy way to meet the asset eligibility requirements would 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 down to 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 Medicaid 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 goals, 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 last minute planning (crisis planning) if/when you need care.

❖ Strategies to meet the *asset* requirements:

- **Single/Widower:**
  - <u>Primary Residence</u>:
    - Each state has an amount of equity they will exclude. In Massachusetts, the amount is $840,000. For most individuals, the home is rarely a hurdle when applying for Medicaid benefits. Even though you may qualify for benefits, Medicaid may still put a lien on the property to recover their expenses.[4]
    - Consideration: It is usually *not* a good idea to sell the house because it turns a "non-countable" 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 usually prevents Medicaid from forcing a sale of the home.[5] Once again, a lien is possible.

- Other Assets:
  - Medicaid recipients are allowed to keep up to $2,000 in assets. Below are some ways to spend down countable assets:
    - Upgrade the car (please no Ferrari)
    - Prepay funeral expenses
    - Time for home renovations
    - Buy that 60 inch flat screen TV
    - Pay off debt
    - Consider purchasing an immediate annuity which turns assets into income.[6]
    - Consider contributing assets to a pooled trust. Some states allow this transfer without triggering a disqualifying transfer/gift.[7]

- **Married:**
  - Primary Residence:
    - The home is "non-countable." For this reason, the home is rarely a hurdle when applying for Medicaid benefits.[8]
  - Other Assets:
    - The Medicaid applicant is allowed to keep up to $2,000 in assets and the healthy spouse is allowed to keep up to $120,900 in assets. Combined, this totals $122,900. 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 to somebody other than your spouse. This will be subject to a penalty period.[9]
      - 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.[10]
      - Schedule a hearing with a Medicaid agent if the healthy spouse feels that they need additional assets beyond the $120,900 to meet living expenses. Medicaid agents have some discretion.[11]
  - 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. The assets in the testamentary trust are an excluded asset.[12]

MEDICAID *ESTATE RECOVERY*

An important area that Medicaid recipients and/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. Other states attempt to recover their expenses from both probated and non-probated assets. Here in Massachusetts, MassHealth focuses on probated assets.

STRATEGIES TO REDUCE/ELIMINATE ESTATE RECOVERY:

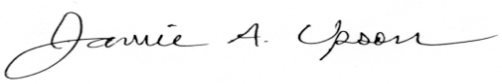
- **Single/Widower:**
  - Primary Residence:
    - If left in the Medicaid recipient's sole name, the state will likely recover their expenses because assets in your sole name will likely be probated after you pass. Some ideas/strategies to potentially reduce or eliminate recovery include:
      - Transfer 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 subject to the five year lookback period or the penalty period.
      - If the home is going to be subject to estate recovery (maybe a lien has already been placed), 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.[13]
      - If the Medicaid recipient has a long term care insurance policy that has benefits of at least $125 per 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*. A life estate gives you the legal right to live in the property for the rest of your life. Your kids' liabilities (divorce or lawsuit) are an issue, but not while you are living in the house. This risk is deferred until after you either sell the house or pass away. In other words, 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. This will help avoid your probate estate. Over the last couple of years, Medicaid has been poking holes in Medicaid plans that include irrevocable trusts. As a result, it seems prudent to review your plan with your attorney every couple of years to ensure the structure is still appropriate.[14]
  - Other Assets:
    - Remember, the Medicaid recipient can only keep up to $2,000, 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 and updating the healthy spouse's will to pass the property to someone other than the Medicaid recipient. 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 include both probated and non-probated assets, then this strategy may not be as effective.[15]
  - Other Assets:
    - Consider transferring 100% of the ownership of other assets to the healthy spouse and updating the healthy spouse's will to pass the assets to someone other than the Medicaid recipient. Remember, transferring assets between spouses is okay. For example, change a joint account to an individual account in the healthy spouse's name.

NEXT STEPS

This documents 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 consultant 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. It is important that you discuss this with your attorney and accountant. 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,



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