Oast & Hook

Elder Law News

Legal power for seniors.

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Medicaid and Long-term Care Planning

A recent *Wall Street Journal* article revisited the subject of long-term care planning since the passage of the Deficit Reduction Act of 2005 (DRA). Although over a year has passed since the enactment of the DRA, elder law attorneys are still working with the effects of the DRA on planning for long-term care, particularly with respect to Medicaid planning.

Medicaid planning has always been a complex area of the law, and it has become even more complex since the enactment of the DRA. The federal government oversees the Medicaid program, but the program is administered by the states. Rules can vary from state to state, and all states have not yet completed modifying their guidelines and regulations as a result of the DRA. Therefore, it is important that seniors and their families facing long-term care costs consult with an elder law attorney in their own state.

Generally, individuals become eligible for Medicaid assistance once their assets are below a certain level; in Virginia that level is $2,000. There are, however, special protections for married couples, so that the spouse living at home (the community spouse) has sufficient funds to meet his or her needs. Prior to the passage of the DRA, many persons transferred assets to their children prior to entering a nursing home. This strategy did have some limits to prevent abuses. The DRA tightened those limits. Prior to the passage DRA, a person could transfer assets, and if the person applied for Medicaid within three years of making the transfer (the lookback period), then the person would be assessed a penalty period based on the amount of the transfer, with the penalty period starting on the date of the transfer. Now, any transfers made within five years of applying for Medicaid will be assessed a penalty period, but the penalty period now starts when the Medicaid applicant is out of funds, is otherwise eligible for Medicaid, and applies for assistance. These rules also cover gifts to grandchildren to help pay for their education. If the grandparent needs to apply for Medicaid within five years of paying for a grandchild's education, then the grandparent will not be eligible for Medicaid, and there will be no funds available to pay for the grandparent's care.

Elder law attorneys are using strategies like irrevocable income-only trusts to assist clients with long-term care planning. Prior to the DRA, transfers to trusts were subject to a five-year lookback period, while transfers to individuals were subject to a three-year lookback period. Now that the five-year lookback period applies to all transfers, trusts have become a good option. Trusts provide more flexibility and more security for the senior than an outright transfer to a child. The senior, if eligible, might also purchase long-term care insurance to cover the lookback period, in case the senior needs nursing home assistance within five years after the transfer to the trust.

Another long-term care planning strategy prior to DRA was using an annuity to provide funds for a spouse living at home while the other spouse was in a nursing home. Seniors can still use annuities, but these annuities must be irrevocable and immediate, and the state usually has to be named as a beneficiary to recover the cost of care for the spouse in the nursing home. It is important that seniors consult with elder law attorneys prior to purchasing annuities, because if they are not set up properly, then the state could deny the senior eligibility for Medicaid.

The most significant lesson of this post-DRA period is that seniors and their families need to work with experts in long-term care planning in order to avoid costly mistakes. The attorneys at Oast & Hook are available to assist persons with their long-term care, financial, and estate planning needs.

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