Medicaid Myths and Misconceptions

In our last issue of *A Step Ahead*, we generally addressed Medicaid planning. From time to time we discuss particular planning strategies that can be implemented in advance of the need for long-term care. Unfortunately, too often we meet with families who neglected to do planning, when the need for long-term care arose, because they mistakenly believed that it was "too late" to plan for Medicaid benefits. The reasons for this are varied. We hope that, by pointing out some of the more common errors, we can help you navigate these difficult waters.

The Five (5) Year "Look-Back" Will Disqualify a Home Care Applicant - Most families are aware that Medicaid "looks back" five (5) years to identify transfers of assets. The penalty that Medicaid imposes for uncompensated transfers, however, does not disqualify applicants from *all* Medicaid benefits. This is a widely held misconception. Very often, a loved one needs assistance with activities of daily living but is able to remain at home. Community based Medicaid covers the cost of home care. The transfer of one's assets has no affect on one's eligibility for this program. The error is to delay in meeting with us as soon as the need for help at home is identified. We can assist in the protection of assets that can be used for a healthy spouse or preserved for the family.

Once the Crisis Strikes, It's Too Late for Medicaid Planning - Clients have come to us with the erroneous belief that it is too late to do Medicaid planning. This has caused families to expend many thousands of dollars on care that could have been paid for by Medicaid. In fact, it is only too late to do Medicaid planning when there are no remaining assets to protect. As indicated above, for home care, there is no penalty associated with transferring assets, regardless of when the transfer occurs. Even after placement in a nursing home, a significant portion of one's assets can be protected. Typically, between 40 and 60% of a person's assets can be insulated and preserved. However, each month of delay reduces the assets that we can protect. While the best results from asset protection planning are obtainable when Medicaid planning begins *before* the need arises, assets can still be protected even after placement in a nursing home.

Revocable Trusts Protect Assets for Medicaid - Many people are mistaken in believing that assets in a revocable trust are protected for Medicaid purposes. This is false. In determining Medicaid eligibility, assets in a revocable trust are considered "available." A revocable trust is designed to afford its creator complete access to the funds in the trust. If the creator is able to access trust assets, Medicaid will require that those assets be utilized to pay for care. A trust must be irrevocable and provide the creator with no right to benefit from the trust principal in order to protect the trust assets and render them "unavailable" to Medicaid. However, the implementation of an irrevocable trust that complies with Medicaid's requirements is not something that should be attempted without the guidance of an attorney who is familiar with Medicaid's rules. There is no "one-size-fits-all" when it comes to Medicaid planning. It is necessary to identify the assets, establish their value and gauge the income of the prospective Medicaid applicant before embarking on a plan. The goal is to ensure that care can be afforded during any penalty period caused by the funding of the irrevocable trust. Again, the sooner the better! Seeking legal assistance as early as possible maximizes the protection afforded by an irrevocable trust.

The Value of My Retirement Account Will Disqualify Me - The impact of a qualified retirement account, such as an IRA or 401K, is typically misunderstood. A retirement account owned by a prospective applicant is exempt and will not be considered in determining the owner's *eligibility* for benefits provided it is in "pay-out" status, meaning that the applicant is withdrawing at least the required minimum distribution each year. Thus, an exempt retirement account will not interfere with Medicaid benefits regardless of its value, $5,000 or $500,000! It is important to note, however, that while the value of the account is exempt, the income the applicant receives from it is not. Once again, we caution you to consult with attorneys who are familiar with Medicaid planning before implementing any planning.

The House is an Exempt Resource - Do not be fooled. There are significant pitfalls. First, only homes that are valued at under $840,000 are exempt. If the house is worth more, it is a countable resource - all of it, not just the value in excess of $840,000. Secondly, if the applicant is in a nursing home, the house is only an exempt resource if he or she intends to return home to live. If returning home is an impossibility or the house is placed on the market or sold, the house is a countable resource. Finally, if the applicant owns a home and is approved for Medicaid community care, the house is only exempt while he or she is living in it. It loses its exempt status if the Medicaid recipient moves to a nursing home and, once the Medicaid recipient dies, Medicaid may seek reimbursement, in the form of "estate recovery," against the value of the house for the payments it has made on behalf of the Medicaid recipient.

Medicaid rules are complex and can be contradictory. It is important to start Medicaid planning early. But remember, as long as there are assets to protect, it is not too late to begin. Schedule an appointment with us at the earliest possible time and we will help you protect as much of your estate as possible.